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2020 CROSS-BORDER CORPORATE CRIMINAL LIABILITY SURVEY

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TABLE OF CONTENTS

INTRODUCTION 1

GLOSSARY 4

AFRICA 5

SOUTH AFRICA. 6

ASIA PACIFIC 10

AUSTRALIA. 11

CHINA. 16

HONG KONG 20

INDIA. 25

INDONESIA 30

JAPAN. 34

SINGAPORE 38

TAIWAN (REPUBLIC OF CHINA) 43

CENTRAL AMERICA. 47

COSTA RICA 48

EUROPE 52

BELGIUM 53

FRANCE 57

GERMANY 62

ITALY 69

NETHERLANDS. 76

RUSSIA 84

SPAIN 87

SWITZERLAND 92

TURKEY 96

UKRAINE 99

UNITED KINGDOM. 103

MIDDLE EAST 106

ISRAEL 107

SAUDI ARABIA. 113

UNITED ARAB EMIRATES 117

NORTH AMERICA. 121

CANADA 122

MEXICO 126

UNITED STATES 131

SOUTH AMERICA 135

ARGENTINA. 136

BRAZIL 141

CHILE 145

VENEZUELA 149

CONTACTS 152

2020 CROSS-BORDER CORPORATE CRIMINAL LIABILITY SURVEY

INTRODUCTION

For any company, the risk that employees or agents may engage in criminal conduct in connection with their work and thereby potentially expose the company (or at least the responsible individuals) to criminal, administrative, and/or civil liability is ever present; for multinational companies, which are necessarily subject to the laws of multiple jurisdictions, this risk is only heightened. How a company manages the risk of corporate criminal liability, in particular, can not only determine its success, but also protect (or imperil) its viability. The stakes do not get much higher than when the company is facing a criminal investigation or, worse, a criminal prosecution. When armed government agents raid corporate offices, when executives are arrested and paraded before news cameras in handcuffs, when shareholders bring lawsuits alleging malfeasance and neglect on the part of directors and officers, when legislators clamor for corporate accountability in politically charged public hearings, and especially when criminal charges against the company are announced, the reality is stark—the company's good name and culture are under attack, and its very existence may hang in the balance.

The sudden demise of the global accounting firm Arthur Andersen in the aftermath of its conviction on obstruction of justice charges in the Enron scandal is the best—but only one—example of the potentially devastating consequences for companies that find themselves in the cross-hairs of a criminal investigation. In the nearly 20 years since Arthur Andersen ceased to be, the enforcement of corporate crime has only escalated. This trend shows no signs of abating. At any given moment, a number of the world's leading business organizations are under scrutiny from law enforcement authorities who possess an assortment of investigative tools and an increasing appetite to use them to combat corporate crime, sometimes with questionable judgment and motivations. And the opportunities for enforcement officials across the world to launch investigations into allegations of corporate crime are abundant—with whistleblower laws offering substantial financial "bounties" to persons who disclose legal violations, the revelation of corporate scandals in media reports, the increased sharing of information by and among enforcement authorities in multiple countries, and the ability of industry participants to assert (accurately or inaccurately) that a competitor has broken the law. Multinational companies are at ever-increasing risk of aggressive criminal enforcement, often across numerous jurisdictions at once.

To be sure, aggressive enforcement of corporate crime can help ensure that such crime is appropriately punished and deterred and that the rights and interests of victims are honored through a criminal proceeding. But the reasonableness of a criminal enforcement action is not always apparent, especially when the alleged misconduct could instead be more effectively redressed through civil or administrative action.

Moreover, in cross-border matters, it can be far from clear whether a corporate entity could even be criminally charged for certain conduct and whether a particular country would actually have jurisdiction to bring a criminal case against the entity premised on that conduct. This is because the jurisdictional analysis in such matters can be complex, and because countries differ not only in what they criminalize, but also in whether and how corporations can be punished under their laws. Thus, even companies with robust compliance programs and legal departments may face challenges in understanding, implementing, and adapting to regulatory requirements across the jurisdictions in which they operate.

Identifying, evaluating, and mitigating the risk of corporate criminal liability is a process. An important step in this process for any multinational company is understanding the landscape of corporate criminal liability and enforcement for every jurisdiction in which the company does business. Because these landscapes change over time, sometimes abruptly, this process must be ongoing and continuous.

This Survey is designed to aid this process by providing an overview of relevant laws in 31 countries and territories spanning the globe. The Survey reports on significant—even dramatic—variations in the landscape of corporate criminal liability, including on foundational topics like these:

- **Corporate criminal defendants.** In many countries, criminal prohibitions apply generally to corporations just as they apply to natural persons. Other countries do not have corporate criminal liability regimes (e.g., Turkey), although companies there may still face sanctions. Others extend corporate criminal liability only to select offenses (e.g., Brazil) or have "quasi-criminal liability" for corporations with some hallmarks of criminal liability (e.g., Italy).
- **Corporate criminal liability for acts of others.** A corporation can act only through its agents. Countries that do provide for corporate criminal liability differ on the circumstances under which a corporation is criminally liable for the acts of those agents, including both natural persons and subsidiaries. In some countries, so-called vicarious liability is linked to acts of senior officers (e.g., Canada); in others, the question focuses on the wrongdoer's actions, functions, authority, and responsibility within the corporation (e.g., Israel).
- **Corporate consequences.** Depending on the country, corporations face a wide range of criminal penalties—as well as collateral consequences of a criminal conviction—including fines, forfeiture, restitution, probation, debarment from government contracts, loss of licenses or security clearances, temporary suspension, or even dissolution.
- **Corporate incentives.** Countries vary with respect to the incentives their laws provide to companies to mitigate the risk of corporate criminal liability and related penalties, if not avoid liability altogether. In some countries, the implementation of an appropriate compliance program can be a defense to corporate criminal liability in certain situations (e.g., Spain); in others, it can be relevant to charging or sentencing decisions (e.g., United States). Countries likewise offer differing incentives for companies to self-report wrongdoing, with some requiring it as a matter of law in certain situations. Countries also differ on the protections and incentives offered to whistleblowers.

Each country's answers to these and other foundational questions offer a starting point to assessing prosecution risk in and across the countries covered by this Survey. They form the basis for foreign enforcement actions—providing legal authorization for law enforcement activity, shaping the scope of criminal investigations, determining the tools and leverage available to prosecutors, and setting the terms of a company's engagement with enforcement authorities. Outside the context of a pending enforcement action, an evaluation of foreign prosecution risk can provide guideposts for company decisions on designing and implementing effective international compliance programs, addressing employee misconduct, monitoring activities of third-party agents, and conducting due diligence on vendors and other potential business partners.

In this era of ever-increasing enforcement of corporate crime, the trend worldwide is toward expanding corporate criminal liability and imposing greater demands on corporate self-governance and social responsibility. Resolutions of criminal investigations that include a company's agreement to pay nine- or even ten-figure financial penalties are now commonplace, as is political pressure to prosecute individuals and companies alleged to be responsible for failed or suspicious transactions or economic downturns. Greater international cooperation between law enforcement agencies has accelerated this trend, increasing both the number and efficacy of cross-border investigations and the associated risks to multinational corporations. The responsibility of addressing foreign prosecution risk is, thus, more pressing and more challenging than ever before.

This Survey is intended as a starting point to give some sense of the scope of corporate criminal liability laws and trends in a particular country, but it is not a substitute for a review of the actual regulations in light of a particular set of facts. This Survey should not be construed as legal advice on any specific facts or circumstances.

If questions come up in relation to the laws of a specific country, the last section of this Survey lists contacts at Jones Day who are in a position to provide information based on specific facts and circumstances or provide guidance with respect to contacting local counsel. If questions come up in relation to multiple jurisdictions,

the Jones Day team, including its local contacts where appropriate, can effectively coordinate to provide a comprehensive and focused response.

Jones Day has extensive experience in providing multidisciplinary and multijurisdictional advice to some of the largest international companies on a wide array of complex criminal law issues and delivers targeted, high-value service wherever our clients do business. In this complex, multijurisdictional environment, and with its team of highly experienced and accomplished international investigations and white-collar lawyers, Jones Day stands ready to assist.

GLOSSARY

TERM	MEANING
DPA	Deferred Prosecution Agreement
NPA	Non-Prosecution Agreement
OECD	Organisation for Economic Co-operation and Development
OECD Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
U.S. DOJ	United States Department of Justice
U.S. FCPA	United States Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78m, 78dd-1 to -3, 78ff)

AFRICA

SOUTH AFRICA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Section 332 of the Criminal Procedure Act, 1977 ("CPA") provides that a corporation may be held criminally liable for "any offence, whether under any law or at common law" in relation to: • "[A]ny act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body;" and • "[T]he omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body." Under the CPA, the offense must have been committed either "in the exercise of [the director's or servant's] powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body." Criminal liability does not apply where the offense is specifically limited to individual liability. Importantly, unlike in jurisdictions that have adopted the principle of *respondeat superior*, there is no systematic requirement in South Africa that the director or servant must have carried out the offense for the benefit of the corporate body in order for the corporation to be liable.
In what circumstances can a corporation be held criminally liable?	South Africa has passed a number of laws that expressly implicate corporate criminal liability, including: • The Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("PRECCA"); • The Companies Act 71 of 2008; • The Companies Act 61 of 1973; • The Competition Act 89 of 1998, as amended; and • Various health, safety, and environmental laws, including the Mine Health and Safety Act, 1996, which deals with protection of the health and safety of employees and other persons at mines, and the National Environmental Management: Waste Act, 2008, which deals with compliance and enforcement of waste management laws.
Is there individual liability for corporate criminal offenses?	Yes. Section 332(5) of the CPA governs situations in which individuals can be held criminally liable for corporate acts. Notably, South Africa's Constitutional Court overturned a provision of Section 332(5) that established the presumed guilt (or reverse onus) of an individual upon the individual's corporate employer's conviction on the ground that it contravened the presumption of innocence. However, Section 332(7) of the CPA contains a separate provision for members of an association or other types of corporate bodies bearing the same presumption of guilt, and this section has not been overturned by the Court.

What are the primary criminal government enforcement agencies?	The primary criminal government enforcement agencies are the National Prosecution Authority and the South African Police Service. Within the South African Police Service, the Directorate for Priority Crime Investigation (the "Hawks") investigates high-profile commercial crime and corruption cases, including foreign bribery. The Specialised Commercial Crimes Unit within the National Prosecuting Authority is responsible for pursuing these cases in court. In addition, South Africa has created Specialised Commercial Crime Courts that hear complex commercial crimes.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Under the CPA, corporations are subject to fines, which may be recovered by attachment and sale of property belonging to the corporate body. Courts have discretion when imposing fines even if the relevant statute does not provide for an amount. In criminal cases based on PRECCA, a court may impose a fine of up to five times the value of the ratification involved in the offense.
What are the available forms of a criminal resolution?	South Africa does not recognize DPAs. However, corporations may enter into plea agreements with a prosecutor authorized by the National Director of Public Prosecutions. Courts do not participate in plea negotiations, but the plea agreement is subject to the court's review, pursuant to the CPA. Depending on the circumstances, the court may reject the plea agreement and proceed with a trial. Additionally, the court has the authority to reject any sentencing terms included in the agreement and provide its own.
What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences include civil liability and administrative actions. If a South African company is tied to foreign bribery, it may be barred from engaging in future public contracts.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. In general, corporate criminal liability for acts committed abroad requires an analysis of factors such as territorial nexus, knowledge, and whether the act is unlawful under local law. If the conduct amounts to an offense under PRECCA, South African courts would have jurisdiction for acts committed anywhere in the world if the individual or legal entity: • Is a citizen of the Republic; • Is ordinarily resident in the Republic; • Was arrested in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic at the time the offense was committed; • Is a company, incorporated or registered as such under any law, in the Republic; or • Is any body of persons, corporate or unincorporated, in the Republic.

	Further, PRECCA provides that certain acts are deemed to have been committed in South Africa—and therefore subject the accused to South African courts' jurisdiction—if: • The act affects or is intended to affect a public body, a business, or any other person in the Republic; • The person is found to be in South Africa; and • The person is not extradited by South Africa or there is no application to extradite that person.
Can a parent company be criminally liable for the acts of a subsidiary?	Possibly. A parent company may be criminally liable if the parent company is aware of the subsidiary's act and has a duty to report it but fails to do so.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Yes. Under PRECCA, self-reporting is required where a natural person in a corporate "position of authority" knows or should reasonably know of corruption, theft, fraud, forgery, uttering a forged document, or extortion, involving an amount of at least ZAR 100,000 (approximately US$5,750). The Financial Intelligence Centre Act also establishes the obligation to report suspicious transactions to the Financial Intelligence Centre. Indicators of suspicious transactions include: • Deposits of funds with a request for their immediate transfer elsewhere; • Unwarranted and unexplained international transfers; • Payment of commissions or fees that appear excessive in relation to those normally payable; • Lack of concern about high commissions, fees, or penalties incurred as a result of a particular type of transaction or particular method of transacting; • Transactions that do not appear to be in keeping with normal industry practices; and • Purchase of commodities at prices significantly above or below market prices.
Is credit offered for self-reporting, cooperation, or remediation?	Generally, no. Self-reporting may be considered a mitigating factor at the time of sentencing, but no formal factors exist to guide sentencing reductions.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. The implementation of an effective corporate compliance program is not an absolute defense, but it may be considered a mitigating factor when it comes time for a prosecutor to decide whether to press charges.

Is failure to implement a corporate compliance program a basis for criminal liability?	No. The failure to implement a compliance program is not a crime.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. South Africa is a party to bilateral and multilateral treaties, including the OECD Convention and the U.N. Convention against Transnational Organized Crime. South Africa's International Co-operation in Criminal Matters Act is another important statute that governs South Africa's cooperation with foreign authorities. South Africa is also known to cooperate in enforcement actions related to the U.S. FCPA and the UK Bribery Act.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There is no government guidance on prosecuting corporations in South Africa.
Does the government incentivize corporations to identify individuals?	No. However, as previously noted, Section 34 of PRECCA requires individuals holding "a position of authority" to report corruption, theft, fraud, forgery, uttering a forged document, and extortion involving ZAR 100,000 or more to the Directorate for Priority Crime Investigations. The Financial Intelligence Centre Act also establishes the obligation to report suspicious transactions to the Financial Intelligence Centre.
Does the government have a whistleblower program to incentivize whistleblowers?	The Protected Disclosures Act and the Companies Act provide protections for whistleblower employees without explicit incentive programs. Section 4 of the Protected Disclosures Act provides whistleblower employees who are suffering retaliation for their disclosure the right to approach the Labour Court for relief. In order for a disclosure to be "protected," it must pertain to a covered subject matter and be disclosed to the right person. The disclosure must also be made in good faith through the appropriate channels. Similarly, disclosures will be protected under the Companies Act when they pertain to a protected subject matter and are made to a covered body. Section 159(5) of the Companies Act entitles whistleblowers to compensation—without specifying any value—where their disclosures are justified and they suffer retaliation. Significantly, only disclosures related to certain topics are protected by the Companies Act, and disclosures must also be made in good faith through the appropriate channels.
Last Updated	September 2, 2020

ASIA PACIFIC

AUSTRALIA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Australia's laws regarding corporate criminal liability are codified at Part 2.5 of the Commonwealth Criminal Code (the "Code"), which is a Schedule to the *Criminal Code Act 1995* (Cth). Australia's corporate criminal liability may undergo further reform pursuant to the Australian Law Reform Commission's ("ALRC") recent recommendations made to Parliament.
In what circumstances can a corporation be held criminally liable?	Under the Code, a corporation may be held criminally liable for an offense if both the "physical" (act) and "mental" (fault) elements are satisfied. An act may be committed by an employee, agent, or officer of a body corporate acting within the actual or apparent scope of his employment or within his apparent authority. The "fault" element must be attributed to a body corporate that expressly, tacitly, or impliedly authorized or permitted the commission of the offense. The means by which "authorization or permission" may be established include where: • The board of directors either carried out the relevant conduct or authorized or permitted the commission of the offense; • A "high managerial agent" either carried out the relevant conduct or authorized or permitted the commission of the offense; • A corporate culture existed that directed, encouraged, tolerated, or led to noncompliance with the relevant provision; or • The corporation failed to create and maintain a corporate culture that required compliance. The term "high managerial agent" is defined as "an employee, agent or officer of the body corporate with duties of such responsibility that his conduct may fairly be assumed to represent the body corporate's policy." Where authorization or permission is established by the conduct of a high managerial agent, the corporation has a defense if it can establish that it exercised due diligence to prevent the conduct or the authorization or permission. Australia has both State and Federal criminal laws. State criminal law generally involves those offenses typically committed by individuals, such as assault and murder. In the rare instance in which the Crown seeks to prosecute a corporation for a State offense, the courts adopt the common law "identification" or "directing mind and will" approach. The identification approach is based on the principles of agency and attributes criminal offenses to corporations based on the acts of directors or senior officers who it can be said are acting as the company. Criminal offenses typically committed by corporations are primarily regulated at a Federal level. In addition to the *Criminal Code Act 1995* (Cth), bases of corporate criminal liability may include:

	• *Corporations Act 2001* (Cth) ("*Corporations Act*"); • *Banking Act 1959* (Cth); • *Insurance Act 1973* (Cth); • *Life Insurance Act 1995* (Cth); • *Superannuation Industry* (*Supervision*) *Act 1993* (Cth); • *Environmental Protection and Biodiversity Conservation Act 1999* (Cth); • *Commonwealth Electoral Act 1918* (Cth); • *Taxation Administration Act 1953* (Cth); • *Competition and Consumer Act 2010* (Cth); and • *National Consumer Credit Protection Act 2009* (Cth).
Is there individual liability for corporate criminal offenses?	Yes. An individual may be liable for a corporation's criminal offense, including on the following bases: • Accessorial liability for persons involved in a corporation's criminal contravention including where they aided, abetted, counseled, or procured the commission of the offense; and • Deemed liability, which, under certain specific pieces of legislation (such as section 495 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)), deems that certain persons in statutory positions are liable based on a corporation's criminal contravention or their failure to prevent a corporation's criminal contravention.
What are the primary criminal government enforcement agencies?	The Commonwealth Director of Public Prosecutions ("CDPP") is the primary authority responsible for prosecuting corporate crime. Federal agencies including, but not limited to, the Australian Federal Police ("AFP"), Australian Securities and Investments Commission ("ASIC"), Australian Taxation Office ("ATO"), Australian Competition and Consumer Commission ("ACCC"), Australian Criminal Intelligence Commission ("ACIC"), Australian Transaction Reports and Analysis Centre ("AUSTRAC"), and Australian Prudential Regulation Authority ("APRA") refer matters to the CDPP.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Companies may face financial consequences and sanctions for criminal offenses. Maximum penalties are set by statute, and sentencing judges have discretion deciding upon a final sentence after considering aggravating and mitigating factors relevant to each offense. A non-exhaustive list of the factors the sentencing court considers when sentencing for a federal offense is set out in the *Crimes Act 1914* (Cth) (although there is currently no specific statutory guidance for sentencing a corporation). The CDPP also publishes detailed guidance in relation to general sentencing factors and principles. In addition to fines, companies may face the following penalties/sanctions: • Injunctions to restrain the party from engaging in the conduct; • Infringement notices; • Confiscation of proceeds; • Disgorgement of profits; • Reparations orders; • Community service orders; and • Banning or disqualification orders.

What are the available forms of a criminal resolution?	The negotiation of charges is encouraged by prosecution policies and guidelines, including the *Prosecution Policy of the Commonwealth: Guidelines for the Making of Decisions in the Prosecution Process* (issued by the CDPP) and the *Cooperation Policy for Enforcement Matters* (issued by the ACCC). Per these guidelines, an offender may be granted immunity from criminal prosecution in extraordinary circumstances. More typically, however, an offender that self-discloses criminal behavior may receive a moderated sentence upon demonstrating cooperation with authorities and making reparations for any damage caused, but any plea negotiations between a plaintiff and a defendant are not binding upon a sentencing judge. However, a judge may consider this as a mitigating factor at the time of sentencing, particularly in circumstances in which the offender has disclosed to authorities the existence of an offense which was unlikely to otherwise come to their attention (referred to as an "*Ellis* discount"). Australia does not currently have a framework in place that permits parties to enter into DPAs, but legislation to enact a DPA scheme is currently before the Australian Federal Parliament (the *Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019* ("2019 Bill")).
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties, and sanctions?" Moreover, while Australia does not have a formal debarment regime such as exists in the United States, past criminal conduct may be taken into account during the procurement processes of the government and private sectors. However, there is no clear guidance as to how criminal convictions ought to affect procurement decisions under the Commonwealth's Procurement Rules.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. As noted above, Part 2.5 of the Code allows the Commonwealth to attribute criminal offenses to corporations. The Code also sets out a number of offenses for which the Commonwealth has extraterritorial jurisdiction. These include bribery, war crimes, crimes against humanity, financing of terrorism, slavery offenses, involvement in criminal organizations, and crimes involving money laundering.
Can a parent company be criminally liable for the acts of a subsidiary?	Yes, a subsidiary's acts may be attributed to a parent company under Part 2.5, if it can be said that they are acts of an agent of the parent "acting within the actual or apparent scope of his or her employment or within his or her apparent authority." Additionally, the 2019 Bill proposes to introduce an offense of failing to prevent foreign bribery. Under the proposed failure to prevent offense, a parent company would be liable if its subsidiary engages in foreign bribery, unless the parent can prove that it had adequate procedures in place to prevent the bribery.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	There is no general obligation to report a corporate criminal act in Australia. However, in New South Wales, it is an offense for a company that knows or believes that another person has committed a serious indictable offense to fail to report that offense to the police without reasonable excuse. It is currently unclear whether, as a matter of law, this obligation is limited to offenses under state legislation or might extend to federal offenses. Until such time as this uncertainty is resolved, companies should assume

	that it does. In addition, certain industries are subject to particular legislative or regulatory reporting requirements. For example, companies in Australia's financial services sector must report breaches, and companies that qualify as "reporting entities" under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) must report on a range of different transactions to AUSTRAC to assist with detection and prevention of financial crime.
Is credit offered for self-reporting, cooperation, or remediation?	Yes, but the extent to which credit for these actions may mitigate a sentence varies from judge to judge. As discussed above, Australian case law suggests particular leniency may be shown in circumstances in which an offender has disclosed to authorities the existence of an offense which was unlikely to otherwise come to their attention.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes, where corporate criminal fault is established through the authorization or permission of a "high managerial agent" under Part 2.5 of the Code, the corporation has a defense if it can prove that it exercised due diligence to prevent the offense. Due diligence generally involves the corporation having implemented effective corporate compliance programs and procedures to prevent the commission of criminal offenses. Similarly, it will be a defense to the proposed failure to prevent foreign bribery offense in the 2019 Bill if a corporation has in place adequate procedures to prevent bribery, which would necessitate effective corporate compliance programs and procedures.
Is failure to implement a corporate compliance program a basis for criminal liability?	Failure to implement a corporate compliance program is not itself a basis for criminal liability. However, under Part 2.5 of the Code, criminal fault may be attributed to a corporation (i) where it is proven that a corporate culture existed within the corporation that directed, encouraged, tolerated, or led to noncompliance with the relevant provision, or (ii) where the corporation failed to create and maintain a corporate culture that required compliance with the relevant provision. Further, if a defendant company lacked a compliance program when a crime occurred, a sentencing judge may view this fact as an aggravating factor at the time of sentencing.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. The Australian government's Attorney-General's Department is the central authority on matters of mutual assistance. Australia is a party to more than 25 bilateral mutual assistance treaties, including agreements with Canada, China, the United Kingdom, and the United States. Australia codified its cooperation procedures in the *Mutual Assistance in Criminal Matters Act 1987* (Cth).
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The CDPP's *Prosecution Policy of the Commonwealth: Guidelines for the Making of Decisions in the Prosecution Process* and the ACCC's *Cooperation Policy for Enforcement Matters* provide guidance on prosecuting corporations.

Does the government incentivize corporations to identify individuals?	Per the *Prosecution Policy of the Commonwealth*, the ACCC and CDPP require corporations seeking immunity to list all related corporate entities or individuals seeking derivative immunity that are known to have been involved in the alleged conduct at the time of application. With respect to the ASIC, the ASIC has stated that corporations can cooperate with the regulatory body by honestly and completely disclosing all information relevant to the misconduct, but it does not explicitly mandate that individual names in particular be disclosed.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes, the provisions are contained in the Corporations Act and the *Taxation Administration Act 1953* (Cth) ("Taxation Administration Act"). The provisions were enacted by the Treasury Laws Amendments (Enhancing Whistleblower Protection) Bill 2018 and replaced existing, but weaker, whistleblowing provisions in those acts and in other legislation. Section 1317AI of the Corporations Act requires that public companies, large proprietary companies, and proprietary companies that are trustees of registrable superannuation entities implement a whistleblower protection policy. Under the revised whistleblower provisions of the Corporations Act, if an employer breaches the confidentiality of a whistleblower or otherwise threatens to harm the whistleblower: • An employer who is an individual may face a civil fine of up to the greater of AU$1.05 million, three times the benefit derived and detriment avoided in respect of the contravention (if that amount can be determined), or 10% of the annual turnover; or • An employer that is a company may face a civil fine of up to the greater of AU$10.5 million, three times the benefit derived and detriment avoided in respect of the contravention (if that amount can be determined), or 10% of the company's annual turnover. Where the court can determine the benefit derived or detriment avoided as a result of the contravention of whistleblowing laws, it may fine a company three times these amounts up to a maximum of AU$525 million. Failure to comply with confidentiality and detrimental conduct provisions are criminal offenses punishable also by imprisonment. Penalties under the revised whistleblower provisions of the Taxation Administration Act include up to two years in prison and/or fines of up to AU$50,400 (individual) and AU$252,000 (company). Breaching the confidentiality of a tax whistleblower carries a penalty of up to six months in prison and/or a AU$12,600 (individual) or AU$63,000 (company) fine.
Last Updated	December 10, 2020

CHINA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Article 30 of the Criminal Law of the People's Republic of China ("PRC Criminal Law") recognizes a concept called "crime committed by a unit," which provides that "any company, enterprise, institution, State organ, or organization that commits an act that endangers society, which is prescribed by law as a crime committed by a unit, shall bear criminal responsibility."
In what circumstances can a corporation be held criminally liable?	A "unit" may be held criminally liable in the People's Republic of China ("PRC") if: • The subject is a company, enterprise, institution, State organ, or organization; • It has been found to have committed one of the offenses expressly set out in the PRC Criminal Law; and • Its purpose in committing the offense was to seek benefits for the unit, and the unit's criminal conduct was related to the unit's work or business.
Is there individual liability for corporate criminal offenses?	Yes. Under Article 31 of the PRC Criminal Law, there is individual liability for corporate criminal offenses. Where a company commits a crime, the company itself shall be fined, and the individuals who are "directly in charge" and "directly responsible for the crime" shall be given criminal punishment.
What are the primary criminal government enforcement agencies?	In most cases, the Public Security Bureau ("PSB") conducts corporate criminal investigations. However, if a case involves the potential misconduct of a governmental official, it may be investigated by the Supervisory Commission, pursuant to the PRC Supervision Law. The PSB and the Supervisory Commission will then submit the case to the People's Procuratorate for prosecution.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Corporations may face financial consequences as a result of criminal convictions but cannot be imprisoned per se. In addition, the person in charge of the company or directly responsible for the crime may face one or more types of penalties, including forfeiture of the illegal proceeds, criminal detention, imprisonment, and confiscation of personal property. The Supreme People's Court ("SPC") and the Supreme People's Procuratorate ("SPP") have issued judicial opinions to further set fine ranges for offenses.
What are the available forms of a criminal resolution?	China does not have a system that allows resolution of a corporate criminal action without going to trial. When the PSB or the Supervisory Commission submits a case to the People's Procuratorate, the People's Procuratorate then decides whether it will prosecute, not prosecute, or dismiss the case.

What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences of a criminal conviction include: • Debarment from certain businesses, such as pawn and/or state secrets-related businesses; • Inability to obtain licenses for evaluation of information security level protection; and • Suspension and debarment from participating in certain government bidding projects.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. The PRC Criminal Law imposes corporate criminal liability for providing bribes to foreign government officials.
Can a parent company be criminally liable for the acts of a subsidiary?	The PRC courts normally do not penalize the parent companies merely because they are shareholders of Chinese entities that committed crimes. However, if a subsidiary is the alter ego of its parent company, the parent company may be criminally liable in the PRC.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	There are general requirements under Chinese laws that can be interpreted as an obligation on all persons and companies to report to Chinese authorities any knowledge of a violation of PRC laws of any kind or severity.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. The PRC Criminal Law encourages self-reporting by promising a form of leniency. Under Article 67 of the PRC Criminal Law, if a criminal voluntarily surrenders to the authorities and confesses a crime, that criminal should receive a lighter or mitigated punishment. Similarly, under Article 390 of the PRC Criminal Law, a bribe-giver may be exempted from punishment completely if: (i) the person's offense is minor; (ii) the person plays a crucial role in solving a major case; or (iii) the person performs major meritorious behaviors in assisting the relevant authorities. However, these are "discretionary circumstances" for the court to consider, not "statutory circumstances" where the court must be lenient. With regards to voluntarily reporting to the Chinese authorities, the court has discretion in determining if any of the above conditions are satisfied and if leniency is merited. Even if the above conditions for a voluntary confession are satisfied, the court still has the right not to offer leniency.
Is the implementation of a corporate compliance program a defense to criminal liability?	There are no specific provisions under PRC law expressly allowing a company to rely on the implementation of a corporate compliance program as a defense against liability.

Is failure to implement a corporate compliance program a basis for criminal liability?	The PRC laws are silent on whether or how the failure to implement a corporate compliance program leads to criminal liability. Nevertheless, a sufficient corporate compliance program may help a company mitigate the risks of criminal misconduct.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. In the past 40 years, China has entered into bilateral criminal judicial assistance treaties, treaties on the transfer of sentenced persons, and extradition treaties with more than 60 countries. For example, the PRC government and the United States entered into the Mutual Legal Assistance in Criminal Matters ("MLAA") treaty in 2010. In 2018, however, the PRC enacted the International Criminal Judicial Assistance Law ("ICJAL"), which may mitigate the effect of these treaties. The ICJAL sets out detailed procedures on how to receive, process, and respond to requests from foreign countries on international criminal judicial assistance. The ICJAL requires that all requests for criminal judicial assistance be first submitted "in accordance with treaties on criminal judicial assistance," such as the MLAA. However, unless approved by the competent PRC authority, the ICJAL provides that no criminal litigation activities covered in the ICJAL should be conducted by any foreign organization, entity, or individual within the territory of the PRC, and no institution, organization, or individual within the territory of the PRC should provide any evidentiary material or assistance to a foreign country.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The SPC and SPP have issued several judicial interpretations or notices to provide guidance on prosecuting corporations. For instance: • Chapter XI of the SPC's Interpretation of Criminal Procedure Law sets out the detailed trial procedures for corporate crimes. • The SPC issued a Reply on Issues Concerning the Application of Law to the Crimes Committed by Foreign Companies, Enterprises or Public Institutions Within the Territory of China ("Reply") on October 15, 2003. Per the Reply, where a foreign company, enterprise, or other public institution that qualifies as a legal entity in China commits a crime within the territory of China, it shall be subject to criminal liability in accordance with the PRC Law. However, where an individual established a foreign company, enterprise, or public institution for the purpose of committing illegal or criminal activities within the territory of China—or where the commission of illegal or criminal acts within the territory of China constitutes the primary activities of a foreign company, enterprise, or public institution after its establishment—those entities' violations of the PRC Criminal Law shall not be treated as a crime committed by a unit. • The SPP issued the Minutes of the Symposiums on Issues Concerning Handling Internet-Related Financial Crime Cases on June 1, 2018, which provides guidance on prosecuting corporations for internet-related financial crimes.

Does the government incentivize corporations to identify individuals?	Yes. According to the SPC and SPP's Notice on Issuing the Opinions on Several Issues Concerning the Determination of Voluntary Surrender, Meritorious Performance and Other Sentencing Factors in Handling Duty-Related Criminal Cases, corporations are incentivized to identify individuals, and individuals are incentivized to voluntarily confess facts related to the crime.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. In 2016, the SPP, PSB, and Ministry of Finance issued the Notice on Protecting and Rewarding Whistleblowers of Occupational Crimes, which sets out detailed rules for incentivizing and protecting whistleblowers. In addition, the PRC Criminal Law, the PRC Criminal Procedure Law, and the PRC Labor Law generally prohibit retaliation against whistleblowers.
Last Updated	December 13, 2020

HONG KONG

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	A corporation can be held criminally liable under what is called the identification principle or vicarious liability. With respect to the identification principle, a corporation may be charged with the criminal acts of the directors and managers who represent the corporation's directing mind and who have control over the corporation. With respect to vicarious liability, a corporation may be liable for criminal acts committed by its employees or agents that concern statutory offenses that impose an absolute duty on the employer.
In what circumstances can a corporation be held criminally liable?	Hong Kong has passed a number of ordinances that target corporations and regulate business activities Under the Interpretation and General Clauses Ordinance, (2017) Cap. 1, 2-22, § 3 (H.K.), the term "person" in any statute is defined as including any public body and any body of persons, whether corporate or unincorporated. Therefore, a corporate body can technically commit most offenses except those for which imprisonment is the only penalty available. However, corporate criminal liability primarily arises from the: • Prevention of Bribery Ordinance, (2017) Cap. 201, 1, § 1(1) ("POBO") (H.K.); • Companies Ordinance, (2019) Cap. 622, 12-214, §§ 659–60 (H.K.); • Securities and Futures Ordinance, (2020) Cap. 571 (H.K.); • Trade Descriptions Ordinance, (2019) Cap. 362 (H.K.); • Theft Ordinance, (2017) Cap. 210, 36, § 19 (H.K.); • Environmental Impact Assessment Ordinance, (2015) Cap. 499 (H.K.); • Drug Trafficking (Recovery of Proceeds) Ordinance, (2019) Cap. 405 (H.K.) ("DTRPO"); • Organized and Serious Crimes Ordinance, (2018) Cap. 455 (H.K.) ("OSCO"); • United Nations (Anti-Terrorism Measures) Ordinance, (2019) Cap. 575 (H.K.); • Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, (2019) Cap. 615 (H.K.); and • Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("National Security Law").
Is there individual liability for corporate criminal offenses?	Yes. In certain circumstances, such as under the Trade Descriptions Ordinance and the Securities and Futures Ordinance, where a corporation has committed an offense, its officers are statutorily deemed guilty of the offense.
What are the primary criminal government enforcement agencies?	Hong Kong's Department of Justice ("Hong Kong DOJ") has authority over criminal prosecutions and often works in conjunction with a number of authorities, which include: • The Independent Commission Against Corruption ("ICAC"), which enforces anticorruption laws in Hong Kong; • The Securities and Futures Commission ("SFC"), which regulates the securities and futures market;

	• The Hong Kong Monetary Authority; • The Insurance Authority; • The Competition Commission; • The Hong Kong Police Force; • The Inland Revenue Department; • The Joint Financial Intelligence Unit; • The Office of the Privacy Commissioner; • The Hong Kong Customs and Excise Department; and • The Office for the Communications Authority.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Hong Kong's criminal-related ordinances and statutes identify a wide range of illegal conduct that is punishable by sanctions, such as monetary penalties and forfeiture. Corporations, unlike individuals, cannot be imprisoned per se. Depending on the charges brought by the authorities, some crimes, such as corporate manslaughter offenses, are subject to unlimited fines. For other offenses, such as those under the Prevention of Bribery Ordinance, Hong Kong law provides a maximum monetary penalty or fine. In addition, Hong Kong case law sets guidelines for some offenses, based on crime- and offender-specific considerations.
What are the available forms of a criminal resolution?	Hong Kong has not formally recognized DPAs and NPAs, but prosecutors in Hong Kong commonly resolve criminal cases through plea agreements. To promote efficiency without compromising effectiveness and public support, prosecutors in Hong Kong, both *sua sponte* and at defendants' invitations, often agree to bring fewer or lesser charges in exchange for a guilty plea. The Prosecution Code incentivizes companies to cooperate and remediate as prosecutors are directed to factor in, among other things, any cooperation from the suspect with law enforcement or demonstrated remorse when deciding whether to prosecute the accused. Moreover, pursuant to Section 18 of the Appendix I of the Prosecution Code, prosecutors may "waiv[e] prosecution, discontinu[e] proceedings conditionally or unconditionally," or "adopt[] diversion schemes" to alleviate excessive court loads.
What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences of a criminal conviction include, among other things, suspension from participating in government service contracts and license revocation or suspension by the SFC.

EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Generally, Hong Kong codifies the common law rule limiting extraterritorial jurisdiction—but that presumption against extraterritorial jurisdiction can be overcome by express exceptions. Those exceptional circumstances include fraud, deception, false accounting, false statements by company directors, and certain inchoate offenses where any one of the constituent elements of the offense occurs in Hong Kong or there is an attempt to commit the offense in Hong Kong. Also, the National Security Law criminalizes acts of secession, subversion, terrorism, and collusion with foreign forces committed outside Hong Kong. In addition, some offenses under the Prevention of Bribery Ordinance related to the bribery of the Chief Executive and public servants apply regardless of whether the advantage is offered, solicited, or accepted in Hong Kong.
Can a parent company be criminally liable for the acts of a subsidiary?	Yes. Although Hong Kong law recognizes a subsidiary and a parent corporation as separate legal entities—such that the parent corporation is not liable for offenses committed by the subsidiary per se—a parent corporation may be liable when the acts of the subsidiary can be attributed to the mind or direction of the parent.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Yes. Although the privilege against self-incrimination is a basic right, it is not absolute in Hong Kong and may be restricted if a relevant provision expressly or necessarily implies that the common law privilege against self-incrimination has been abrogated. Generally, a corporation does not have an affirmative obligation to report crimes or provide assistance to law enforcement authorities. However, financial institutions may have an obligation to report knowledge or suspicion that property in their possession constitutes proceeds from bribery, and failure to comply with this obligation may constitute an indictable offense under Hong Kong's money-laundering legislation. In addition, a corporation may be required to comply with Section 14(1)(d) of the Prevention of Bribery Ordinance, which requires subjects of an investigation into suspected corruption to respond to the investigation.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. Section 5.9 of the Prosecution Code directs prosecutors to consider, among other things, "any cooperation from the suspect with law enforcement" and "the nature and circumstances of the offence," which is likely to encompass self-reporting and cooperation of the subject corporation.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. While some authorities, such as the ICAC, recommend implementing an effective compliance program to minimize corruption and mitigate the risk of violations, it does not constitute a defense to criminal liability per se.

Is failure to implement a corporate compliance program a basis for criminal liability?	No. As previously mentioned, the compliance programs recommended by Hong Kong authorities (such as the ICAC) are generally only advisory. Therefore, failure to implement said programs does not generally constitute a basis for criminal liability. That said, prosecutors may consider the presence and nature of a corporation's compliance program when deciding whether and how to charge a corporation with criminal conduct.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Hong Kong participates in the United Nations Convention against Corruption and has a well-developed framework for extradition, mutual legal assistance, and cross-border recovery of proceeds. Specifically, Hong Kong has signed more than 60 agreements on the surrender of fugitive offenders ("SFO"), mutual legal assistance in criminal matters ("MLA"), and the transfer of sentenced persons. Further, Hong Kong has developed mutual assistance systems for taking evidence, executing search and seizure warrants, and producing documents. In October 2014, the Hong Kong DOJ issued a guide to asset recovery in Hong Kong to facilitate and simplify international asset recovery. Additionally, Hong Kong's regulatory and criminal authorities can share information under international conventions or memoranda of understandings. However, since the enactment of the National Security Law in June 2020, 10 countries (Australia, Canada, Finland, France, Germany, Ireland, the Netherlands, New Zealand, the United Kingdom, and the United States) have suspended their SFO agreements and/or MLA agreements with Hong Kong ensuing from their concerns over the said law. In response, the Hong Kong government issued notices to shelve or suspend the SFO and MLA agreements with these countries. To date, there are about 45 agreements concerning SFO, MLA, and the transfer of sentenced persons still in effect.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The Prosecution Code is a set of statements and instructions to guide prosecutors. Among other things, it provides guidance on two preliminary issues in deciding whether to prosecute. First, do prosecutors have sufficient evidence to support a prosecution? Second, if there is sufficient evidence, does the public interest require a prosecution to be pursued? As to the second issue, Section 5.9 of the Prosecution Code sets forth a nonexhaustive list of factors to evaluate whether the public interest favors prosecution.
Does the government incentivize corporations to identify individuals?	Probably yes. There is no explicit policy or law that provides reduced fines if a corporation identifies relevant individuals. However, identifying implicated individuals can arguably constitute corporate cooperation, which the Hong Kong DOJ may value.

Does the government have a whistleblower program to incentivize whistleblowers?	Yes. A number of measures exist to ensure that reports to authorities remain confidential, to protect the anonymity and personal safety of informers, and to further prevent unfair treatment. Under the Prevention of Bribery Ordinance, for instance, the names and addresses of informers are protected from use in civil or criminal proceedings. ICAC informers are entitled to witness protection under the Witness Protection Ordinance, including protection for personal safety or well-being. In addition, under the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance, witnesses in any civil or criminal proceedings are not required to reveal the identity of the person making the disclosure.
Last Updated	December 12, 2020

INDIA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	The concept of corporate criminal liability in India was established by a 2005 decision from the Supreme Court of India, in which the Court held that a company may be prosecuted and punished for criminal offenses. In another leading case, the Supreme Court held that a corporation is virtually in the same position as any individual and may be convicted under common law, as well as statutory offenses, including those requiring mens rea. The Supreme Court of India has generally recognized corporate criminal liability for common law and statutory offenses based on the actions of its employees under the theory of attribution or "alter ego." The Supreme Court first recognized that companies may be prosecuted for strict liability offenses that include mandatory imprisonment. Then, the Court recognized that companies may be prosecuted for crimes requiring mens rea. The mens rea of directors and managers may be attributed to companies on the principle that they represent the state of mind of the company. The criminal liability of a corporation also arises when an offense is committed in relation to the business of the corporation by a person or body of persons in control of the company's affairs. In such circumstances, it is necessary to ascertain that the degree and control of the person or body of persons is so intense that the company may be said to think and act through the person or body of persons. In addition, there are several statutory schemes that explicitly recognize corporate criminal liability: • The Companies Act, 2013; • The Prevention of Corruption Act, 1988 ("PCA"); • The Securities and Exchange Board of India ("SEBI") Act, 1992 ("SEBI Act"); • The Prevention of Money Laundering Act, 2002 ("PMLA"); • The Income Tax Act, 1961 ("Income Tax Act"); • The Negotiable Instruments Act, 1881 ("NIA"); and • The Information Technology Act, 2000.
In what circumstances can a corporation be held criminally liable?	Following the Supreme Court's decisions regarding corporate criminal liability, a corporation can be criminally liable for nearly any type of conduct prohibited in the Indian Penal Code, 1960 ("IPC"). The term "person" under the IPC is defined to include any company or association or body of persons. The IPC extends to include all body corporates whether incorporated or not. In addition to the IPC, certain other statutes governing corporate conduct can result in criminal liability, including:

	• The Companies Act provides for offenses whereby both the company and its directors and other officers can be criminally liable. The Companies Act specifically recognizes fraud relating to the affairs of a company as a criminal act punishable with imprisonment. It also criminalizes false statements, personation of a shareholder, and omissions in corporate public reporting documents. • The PCA is the primary law protecting against corruption in government agencies and public sector businesses by prohibiting bribery and other acts of corruption. Recent amendments to the PCA allow for the government to prosecute commercial organizations formed outside of India "if any person associated with such commercial organizations gives or promises to give any undue advantage to a public servant . . . ." An "associated person" is defined broadly as any person that provides services on behalf of the commercial organization. The prohibited conduct is similar to the U.S. FCPA. • The SEBI Act is similar to U.S. securities laws in that it primarily criminalizes fraudulent conduct in connection with the sale of securities. • Under the Income Tax Act, any default in complying with the provisions of the Act may attract criminal penalties. This includes cases involving the concealment, transfer, or delivery of any property with the intention to thwart recovery of tax, the willful attempt to evade any tax, or the making of false statements to Income Tax Authorities. Where an offense under the Income Tax Act has been committed by a company, and the punishment for such offense is imprisonment and fine, then the company shall be punished with a fine and every defaulting officer of the company may be punished in accordance with the provisions of the Income Tax Act. • The PMLA criminalizes offenses relating to money laundering. The PMLA extends to companies and "every defaulting officer" of the company. • The NIA criminalizes economic offenses relating to promissory notes, bills of exchange, and checks. The NIA extends to the company and any person who, at the time of the offense, was in charge of the company's conduct. • The Information Technology Act criminalizes disclosures of sensitive information and applies to companies. Notably, the Indian government has taken steps in recent years to decriminalize certain minor, compoundable, and technical offenses under the Companies Act, PMLA, Income Tax Act, and NIA.
Is there individual liability for corporate criminal offenses?	Yes, but in limited circumstances. The Supreme Court of India has held that there is no vicarious liability for corporate criminal offenses, including for company directors and managers, in the absence of a statute providing for vicarious liability. Considering the principles discussed above regarding corporate criminal liability, a company and an individual could be jointly liable for the same conduct if it is allowed by statute or the individual's mens rea is attributed to the company. Various laws, including foreign exchange regulations and tax, labor, and environment laws, attract the doctrine of vicarious liability by specifically providing for liabilities of a person in charge and/or directors in the case of an offense being committed by a company. Some of the actions identified by statutes as situations where individuals may be held liable for the acts of a company include bouncing checks, copyright violations, violations of the Information Technology Act, and violations of food safety laws.

	In addition to the jurisprudence, under the PCA, PMLA, and Income Tax Act, among other laws, the individuals may be liable for the conduct of the corporation if the offense was "committed with the consent or connivance of any director, manager, secretary or other officer."
What are the primary criminal government enforcement agencies?	The primary corporate criminal enforcement agencies are the Serious Fraud Investigation Office, which investigates and prosecutes white-collar crimes and fraud; the Registrar of Companies, which is empowered to investigate the affairs of a company; the Central Vigilance Commission, which supervises corruption in government companies and departments; and the SEBI, which regulates and investigates matters related to the securities market. India is a federated state, and much of the police power is delegated to the states. As such, corporate criminal investigations could also originate out of the Central Bureau of Investigation, which is India's premier investigative agency specializing in crimes involving government officials and politicians; the Income Tax Department, which is responsible for the investigation of economic crimes and tax evasion; the Enforcement Directorate, which is the specialized financial investigation agency under the Department of Revenue, Ministry of Finance; the Directorate of Revenue Intelligence, under the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, which is the apex agency of the Indian Customs in the field of anti-smuggling; and the Central Economic Intelligence Bureau, which is responsible for gathering and monitoring the economic and financial sectors for economic offenses.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	For criminal conduct under the IPC, companies are subject to fines only (not imprisonment), but they may still be prosecuted for crimes that mandate imprisonment. Possible fine amounts include: • Under the Companies Act, companies may face a fine ranging from INR 500 (Indian National Rupees Five Hundred) to INR 10,00,00,000 (Indian National Rupees Ten Crores) or (in some cases) an uncapped fine (ranging from INR 200 to INR 5,000 per day) levied for every day during which the default continues. • Under the PCA, which does not establish the amount of the fine, the court decides the fine amount based on certain principles, including the amount or the value of property that the accused company has obtained by committing the offense or the pecuniary resources. • Under the SEBI Act, companies may face a fine of up to INR 25,00,00,000 (Indian Rupees Twenty Crores). In certain cases, the fine may also be levied on a recurring basis that may extend to INR 5,00,000 (Indian Rupees Five Lakhs) for every day of default until the failure or breach continues. • Under the PMLA, companies may face a fine of up to INR 5,00,000 (Indian Rupees Five Lakhs). • Under the NIA, companies may face a fine of up to twice the amount of the check. • Under the Income Tax Act, companies may face a fine, which (depending on the offense) may or may not be set by statute. • Under the Information Technology Act, companies may face a fine of up to INR 2,00,000 (Indian Rupees Two Lakhs).

What are the available forms of a criminal resolution?	Plea bargaining is allowed under the Code of Criminal Procedure, although plea agreements can provide concessions only on the amount of penalties. The Indian government does not recognize DPAs or NPAs for criminal prosecutions. However, there have been recent discussions regarding legislative changes to possibly implement DPAs.
What are the potential collateral consequences of a corporate criminal conviction?	A corporate criminal investigation or conviction in India could potentially lead to a variety of collateral consequences, such as subsequent action by Indian tax or anti-money laundering authorities, company director disqualification or removal, or contract termination or blacklisting for a company that has contracts with government agencies.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Under the IPC, "any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India."
Can a parent company be criminally liable for the acts of a subsidiary?	India follows the general proposition that parent companies are not liable for the acts of their subsidiaries (based on the principle that a parent and a subsidiary are separate legal entities). That said, some court decisions in India have opened the door for a finding of piercing the corporate veil where a parent may be liable for the subsidiary's actions.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Generally, no. However, the Companies Act does require a company's auditors to report to the central government if the auditor has reason to believe that fraud is or has been committed against the company by an employee or officer.
Is credit offered for self-reporting, cooperation, or remediation?	In India, self-reporting is not common because there are few laws providing leniency or mitigation for self-reporting or cooperating with investigative agencies. The Competition Act, 2002, is one of the few laws that allows for reduced penalties for companies that make a full disclosure of alleged violations of the Act.
Is the implementation of a corporate compliance program a defense to criminal liability?	Generally, no. However, the existence of a program and its effectiveness could negate the mens rea of a potential charge. There is one statute addressing compliance program defenses—the PCA. The PCA allows companies to assert a defense that the company had "adequate procedures" to prevent "associated persons" from engaging in corrupt conduct. However, guidelines regarding "adequate procedures" have not been published.

Is failure to implement a corporate compliance program a basis for criminal liability?	No, there does not appear to be a statutory basis for such criminal liability—but, as indicated above, the lack of a sufficient program may harm a potential defense to liability.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. India has mutual legal assistance treaties with at least 40 countries, including the United States; the U.S. treaty was ratified in 2005. As such, Indian law enforcement agencies have cooperated with the U.S. DOJ and the U.S. Securities and Exchange Commission, especially on U.S. FCPA cases. In addition, India has extradition treaties with 43 countries, including the United States; the U.S. treaty was signed in 1997.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There does not appear to be any such guidance.
Does the government incentivize corporations to identify individuals?	In India, self-reporting is not common and there does not appear to be an incentivizing program to encourage companies to self-report. As stated above, the Competition Act of 2002 provides for reduced penalties for self-reporting.
Does the government have a whistleblower program to incentivize whistleblowers?	No, the government itself does not run an incentive program, but various laws require public companies to institute whistleblower programs.
Last Updated	November 12, 2020

INDONESIA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability is provided for by specific laws (although not the Indonesian Penal Code, which does not acknowledge corporate criminal liability). Thus, the types of crimes that give rise to liability depend on each of these laws. In 2016, the Supreme Court issued Supreme Court Regulation No. 13 of 2016 on the Procedure for the Handling of Criminal Cases Committed by Corporations ("Regulation 13/2016"), which supplements laws that acknowledge corporate criminal liability and provide guidelines for law enforcement agencies in handling the investigation of criminal cases by corporations.
In what circumstances can a corporation be held criminally liable?	Bases for corporate criminal liability include: • Law No. 31 of 1999 on the Eradication of Corruption, art. 20(2), which provides that "criminal acts of corruption committed by a corporation" are those committed "in the context of a working relationship or other relationships, undertaken within the environment of the aforementioned corporation, either singularly or jointly"; • Law No. 8 of 2010 Concerning the Prevention and Eradication of the Crime of Money Laundering, art. 6(2), which provides that a corporation can be criminally liable for money-laundering crimes "carried out or instructed by the Corporation's Controlling Personnel; carried out in the framework of fulfilling the Corporation's purpose and objective; carried out in accordance with the task and function of the perpetrator or the person issuing the order; or carried out for the purpose of providing benefit to the Corporation"; • Law No. 8 of 1999 on Consumer Protection, which provides that an entrepreneur, defined as "an individual person or a company," may be held criminally liable for violating the various enumerated consumer protection laws; and • Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition, which provides that an entrepreneur, defined as "an individual person or a company," may be held criminally liable for violating the enumerated anticompetition laws.
Is there individual liability for corporate criminal offenses?	Yes, at least for certain offenses, such as under Law No. 8 of 2010 Concerning the Prevention and Eradication of the Crime of Money Laundering, art. 1(9), and Law No. 31 of 1999 on the Eradication of Corruption, art. 20.
What are the primary criminal government enforcement agencies?	The Police of the Republic of Indonesia investigates crimes, and the Attorney General of the Republic of Indonesia prosecutes crimes. Other governmental enforcement agencies include the Corruption Eradication Commission ("KPK"), which investigates and prosecutes certain corruption crimes, and the Financial Transaction Reports and Analysis Centre, which is responsible for the prevention and eradication of money laundering.

FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	The type of sanctions varies depending on the provision in the law acknowledging corporate criminal liability. Sanctions may include fines, revocation of a license, freezing of business units, and confiscation of assets. Examples include: • Law No. 31 of 1999 on the Eradication of Corruption, art. 20(7): "The principle charges that may be brought against a corporation shall only be in the form of fines providing that the maximum punishment be increased by 1/3 (one-third)." • Law No. 8 of 2010 Concerning the Prevention and Eradication of the Crime of Money Laundering, art. 7(1): "The main criminal sentence imposed against the Corporation shall be a criminal fine maximum Rp100,000,000,000.00 (one hundred billion rupiah). In addition to a criminal fine, the Corporation may also be imposed with a supplementary criminal sentence in the form of: announcement of the judge's sentence; freezing of the Corporation's business in part or in whole; revoking of business permits; dissolution and/or banning of the Corporation; confiscation of the Corporation's assets for the state; and/or take-over of the Corporation by the state." • Law No. 8 of 1999 on Consumer Protection, arts. 62–63: Penalties include fines, confiscation of certain goods, announcement of judge's decision, payment for damages, injunction to stop certain activities that cause damages to the consumers, the obligation to pull out goods from circulation, or revocation of business permits. • Law No. 5 of 1999 on the Prohibition of Monopoly Practices and Unfair Business Competition, arts. 48–49: Penalties include criminal fines, revocation of business permits, prohibition from holding certain positions, or termination of certain activities or actions that cause damage to other parties.
What are the available forms of a criminal resolution?	Indonesia does not acknowledge the concept of plea bargains. Because there is not much case law concerning corporate criminal liability in Indonesia, forms of criminal resolution for corporations are relatively undeveloped.
What are the potential collateral consequences of a corporate criminal conviction?	See above (in addition to a criminal fine, corporations may be subject to a supplementary criminal sentence in the form of an announcement of the judge's sentence, freezing of the corporation's business in part or in whole, revocation of business permits, dissolution or banning of the corporation, confiscation of the corporation's assets for the state, or takeover of the corporation by the state).
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Bases include: • Law No. 31 of 1999 on the Eradication of Corruption, art. 16: "Any person outside the territory of the Republic of Indonesia rendering assistance, opportunities, means or information to enable the commission of criminal acts of corruption shall be liable to the same penalties." • Law No. 8 of 2010 Concerning the Prevention and Eradication of the Crime of Money Laundering, art. 10: "Any person residing within or outside of the territory of the Republic of Indonesia who participates in carrying out, attempts to carry out, aids in carrying out, or is part of a criminal conspiracy to perform a crime of money laundering, shall receive a criminal sentence equal to that referred to in Article 3, Article 4, and Article 5."

	• Law No. 11 of 2008 on Electronic Information and Transaction, art. 2: "This Law shall apply to any Person to take legal acts as governed by this Law, both within jurisdiction of Indonesia and outside jurisdiction of Indonesia, which has legal effect within jurisdiction of Indonesia and/or outside jurisdiction of Indonesia and detrimental to the interest of Indonesia."
Can a parent company be criminally liable for the acts of a subsidiary?	Yes. Regulation 13/2016 provides that if a corporation commits a crime with its parent or subsidiary or other related corporation, those entities can also be held liable for the crime, if they had a role in it.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. There is no regulation requiring self-reporting of a corporate criminal act.
Is credit offered for self-reporting, cooperation, or remediation?	Similar to common criminal procedure, credit for self-reporting, cooperation, or remediation may be given only in the form of a lighter penalty imposed when proven guilty.
Is the implementation of a corporate compliance program a defense to criminal liability?	Under Regulation 13/2016, a judge may assess whether a corporation ensured compliance with the provisions of the applicable law in order to avoid the commission of the crime, but there is no law providing that a compliance program is a defense to criminal liability.
Is failure to implement a corporate compliance program a basis for criminal liability?	While Regulation 13/2016 provides that preventive measures are one of the parameters to assess a corporation's liability, there is no provision, under either Regulation 13/2016 or the various laws acknowledging corporate criminal liability, providing for liability for not having adopted measures to prevent the crime.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Indonesia is a signatory to the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	Supreme Court Regulation 13/2016 offers guidelines for prosecuting corporations. This SC Regulation may change the direction of prosecution in criminal cases involving corporations. Upon the issuance of the SC Regulation, the KPK has stated that it intends to use the SC Regulation to chase corporations in corruption cases. The SC Regulation is a procedural regulation. It does not deal with crimes and does not expand the sanctions imposed by the laws governing various crimes. The SC Regulation applies to any type of corporation, whether it is in the form of a limited liability company or a partnership. The SC Regulation does not differentiate between local and foreign corporations. Given the broad definition of "corporation" and the nondifferentiation of local and foreign corporations, the SC Regulation can also apply to foreign corporations, although there may be jurisdiction issues of Indonesian law enforcement agencies over foreign corporations depending on the circumstances of the case. Criminal liability is not only limited to corporations but can also be applied to groups of corporations. If a crime is committed by a corporation with its parent or subsidiary or other related corporations, they can also be held accountable for the crime, depending on their roles in the crime. The SC Regulation ties the act committed by the management to the corporation. The SC Regulation adopts a wide interpretation of "management," as it is defined to include not only people having the authority to manage or represent a corporation but also those that have control over, or can influence, a corporation's policies or decisions. Potentially, this means that "management" is not limited to only members of the board of directors of the corporation being investigated/prosecuted.
Does the government incentivize corporations to identify individuals?	There is no regulation that explicitly incentivizes corporations to identify individuals.
Does the government have a whistleblower program to incentivize whistleblowers?	The KPK, a government agency established to fight corruption, has a "whistleblower system" available through its website, which allows citizens to "report a criminal offense committed by someone to the Internal Control department where you work." In addition, other government agencies (e.g., the Indonesian Investment Coordinating Board) have enacted their own whistleblower protection systems. Further, some legislation incentivizes whistleblowers. For example, Law No. 31 of 1999 on the Eradication of Corruption, art. 42, provides that "[t]he government shall grant commendations to members of the public who have rendered their assistance in efforts to prevent and eradicate acts of corruption."
Last Updated	November 18, 2020

JAPAN

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	As a general rule, only individuals may be held criminally liable under Japanese law. Legal entities may be subject to criminal liability only if an express provision known as a dual liability clause ("*ryobatsu-kitei*") exists. These provisions are found in various acts of Japanese legislation and provide that legal entities (including corporations) may be held liable jointly with individuals who actually committed the offense on behalf of the legal entity. A legal entity may be punished only after it has been proven that an officer or employee committed a specific crime in the course of business. Theoretically speaking, the legal entity will not be held liable if it can prove that there was no negligence on the part of the company in relation to the misconduct, although proving no negligence can be exceedingly difficult in practice. Notably, although it is necessary to identify the individual perpetrator and the relevant offense committed, the conviction of the individual perpetrator is not a prerequisite to the prosecution of the company. Generally speaking, foreign companies can be subject to criminal liability in Japan, although the individual laws may treat them differently from domestic companies.
In what circumstances can a corporation be held criminally liable?	Japanese laws include a number of specific provisions imposing corporate criminal liability related to: • Insider trading (see, e.g., *Kinyū shōhin torihiki-hō* [Financial Instruments and Exchange Act], Act No. 25 of 1948, art. 207(1) (Japan)); • Bribery of foreign public officials (see *Fusei kyōsō bōshi-hō* [Unfair Competition Prevention Act], Act No. 47 of 1993, art. 22(1) (Japan), art. 21(3) (Japan)); • Commercial matters (see, e.g., *Kaisha-hō* [Companies Act], Act No. 86 of 2005, art. 9 (Japan); see also id. art. 350); • Labor matters (see, e.g., *Rōdō kijun-hō* [Labor Standards Act], Act No. 49 of 1947, art. 121 (Japan)); • Privacy matters (see, e.g., *Kojin jōhō hogo-hō* [Act on the Protection of Personal Information], Act No. 57 of 2003, art. 83 (Japan)); • Antitrust matters (see, e.g., *Dokusen kinshi- hō* [Antimonopoly Act], Act No. 54 of 1947 (Japan)); • Tax matters (see, e.g., *Hojin zeihō* [Corporate Income Tax Act], Act No. 34 of 1965 (Japan)); and • Environmental matters (see, e.g., *Taiki osen bōshi-hō* [Air Pollution Control Act], Act No. 97 of 1968, art. 25 (Japan)).
Is there individual liability for corporate criminal offenses?	Yes. Dual liability clauses provide for the punishment of both corporate entities and individuals. Some Japanese statutes (such as the Antimonopoly Act) also include a triple punishment provision ("*sanbatsu-kitei*"), which imposes a fine on the representative of the corporation to which the offender belongs, or the employer of the offender that failed to take necessary measures to prevent the offense.

What are the primary criminal government enforcement agencies?	The Public Prosecutor's Office generally has the sole power to initiate prosecution of crimes in Japan. Public prosecutors have discretion over whether to initiate prosecution and may choose not to do so depending on the gravity and circumstances of the offense. Following the prosecution, public prosecutors also enjoy discretion to determine the level of punishment to be requested in court. Additionally, there are certain regulatory agencies that have the power to investigate corporate criminal misconduct (such as tax, customs, securities, and competition authorities). Although these regulatory agencies may conduct an investigation, the Public Prosecutor's Office has exclusive authority as to the initiation of criminal prosecutions.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	The main criminal penalties against corporations are limited to fines. In addition, the court may determine a confiscation ("*bosshu*") or collection of the equivalent value ("*tsuityo*"). Japanese law also provides for the imposition of surcharges ("*kachokin*"). Surcharges are distinguished from fines (including administrative fines) in Japan, as fines relate only to criminal punishment.
What are the available forms of a criminal resolution?	Historically, plea bargaining was not allowed in Japan. However, recent amendments to Japan's Criminal Procedure Law (which became effective in June 2018) introduced plea bargains for certain types of crimes. The "specific crimes" include: (i) drug and firearm-related crimes, and (ii) economic or financial crimes, including bribery, fraud, violations of the Antimonopoly Act, embezzlement, and tax evasion. Under the new legal framework, a prosecutor can negotiate to drop or reduce charges if a suspect/defendant provides testimony or evidence of crimes committed by a third party (individual or company). Unlike the U.S. plea bargaining system, a suspect/defendant cannot receive any immunity or reduction in penalty by providing evidence or testimony with regard to his/her own crimes under the bargaining system. For the bargaining system to apply, both (i) the crimes of the suspect/defendant who is a party to the bargaining agreement, and (ii) the crimes of the third party with regard to which the suspect/defendant will provide cooperation must fall within the statute's list of specified crimes.
What are the potential collateral consequences of a corporate criminal conviction?	In addition to criminal punishment, failing to comply with Japanese regulations may give rise to administrative sanctions. These can include the revocation of business licenses, debarment from entering into public contracts, the public naming of the company in the Official Gazette or other media, and tax penalties.

EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	As a general rule, criminal acts committed outside of Japan are not subject to criminal liability under Japanese law. However, criminal liability (including corporate liability) is possible when there is a specific provision in Japanese law punishing acts committed abroad, such as under the Unfair Competition Prevention Act, which prohibits foreign bribery.
Can a parent company be criminally liable for the acts of a subsidiary?	No.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Apart from government officials and administrative authorities (who must file an accusation with the police or the Prosecutor's Office if they believe a crime has been committed), individuals and legal entities in Japan have no legal obligation to self-report. They are also not liable for failing to do so.
Is credit offered for self-reporting, cooperation, or remediation?	Japan's new plea bargaining system provides an incentive for individuals and corporations to self-report information about crimes committed by others in return for favorable treatment such as nonprosecution and reduced sentences. Voluntary self-disclosure of one's own potential violations can also be an informal mitigating factor that can lead to a lesser penalty, and such mitigation would be even mandatory if the relevant law so provides. Generally speaking, the extent of mitigation ultimately depends on all other factors (including cooperation and remediation) within the court's discretion.
Is the implementation of a corporate compliance program a defense to criminal liability?	Theoretically speaking, companies should be immune from dual liability by proving no negligence in overseeing the individuals who committed the crime. However, the threshold to convince a court of no fault is very high, and the implementation of a corporate compliance program itself would not be enough as a legal defense in general. Even if a company is unable to evade criminal liability on the basis of a compliance program, the company may put forward its compliance procedures as a mitigating factor at sentencing.
Is failure to implement a corporate compliance program a basis for criminal liability?	No.

COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Japan has ratified the Rome Statute of the International Criminal Court. Japanese enforcement agencies cooperate with foreign enforcement agencies based upon treaties with other countries and mutual legal assistance requests. Japan has entered into such treaties with many countries, including the United States, South Korea, PRC, Hong Kong, the European Union, and Russia. The procedures Japanese authorities follow when responding to requests for cooperation from foreign authorities are laid out in the Act on International Assistance in Investigation and Other Related Matters. In addition to cooperating with foreign government authorities through diplomatic channels, the Japanese National Police Agency cooperates with other police authorities as a member of the International Criminal Police Organization.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There does not appear to be any government guidance on prosecuting corporations.
Does the government incentivize corporations to identify individuals?	The government does not incentivize corporations to identify individuals within their own organization who have committed a wrongdoing. However, the newly implemented Japanese plea bargaining program described above incentivizes corporations to identify unrelated third parties who have committed certain specified crimes.
Does the government have a whistleblower program to incentivize whistleblowers?	The Whistleblower Protection Act prohibits discriminatory treatment of employee whistleblowers and includes prohibitions on termination, demotion, or reduction in salary where such termination or discriminatory treatment is due to the whistleblowing and the employee meets certain requirements. This law has been criticized as an ineffective deterrent, though, largely because it lacks a provision to sanction companies that punish whistleblowers. In response, the law was recently amended in June 2020 to enhance internal whistleblowing procedures, which will come into force within two years. Under the amended law, business operators with more than 300 employees must develop internal systems to respond to whistleblowing claims.
Last Updated	November 12, 2020

SINGAPORE

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	A corporation has a distinct legal personality and may therefore be prosecuted for criminal offenses that it has committed. As with individuals, to secure a criminal conviction in a court of law, both the actus reus and mens rea elements of the offense must be proven beyond a reasonable doubt. Because corporations are artificial legal persons, the mens rea element may be satisfied either by way of the (i) identification principle or the (ii) agency principle. Under the identification principle, a company may be held liable for the acts and states of mind of individuals who represent the company's "directing mind and will." This generally encompasses boards of directors and other senior officers who carry out functions of management and speak and act as the corporation. This is a case of primary liability, as the minds of the directors/senior officers are treated as the mind of the corporation itself. In contrast, under the agency principle, a corporation may be held vicariously liable for the acts of its "servants" (i.e., employees) generally when such acts were committed within the relevant employee's scope of employment. In certain circumstances, state of mind is not a necessary element of the offense (i.e., strict liability offenses), and some offenses require a lesser finding of culpability to establish corporate liability (e.g., the consent or neglect of an officer or director).
In what circumstances can a corporation be held criminally liable?	Section 2(1) of the Interpretation Act (Chapter 1 of Singapore) provides that the definition of "person" includes any company or association or body of persons, whether corporate or unincorporate. As such, where criminal offenses and liability are defined to extend to persons in general, corporations may be held criminally liable for those offenses, whether or not the legislation in question specifically refers to corporate entities. There are, however, certain offenses that cannot, by their very nature, be committed by corporations. Common bases of corporate criminal liability include: • General corporate fraud, including criminal breach of trust, cheating, forgery, falsification of accounts, and counterfeiting (see Penal Code (Cap 224)); • Securities fraud, including insider trading, false trading and market rigging, market manipulation, affecting the price of securities by the dissemination of misleading information, and fraudulently inducing persons to deal in securities (see Securities and Futures Act (Cap 276) (2001)); • Fraud offenses under the Companies Act, including the making of false and misleading statements (see Companies Act (Cap 50)); • Corruption offenses (see Prevention of Corruption Act (Cap 241); Penal Code (Cap 224) Ch. IX); • Money laundering and terrorism financing (see Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A); • Terrorism (Suppression of Financing) Act (Cap 325);

	• Tax evasion (see Income Tax Act (Cap 134)); • Environmental offenses (see Environmental Protection and Management Act (Cap 94A)); • Workplace safety and health offenses (see Workplace Safety and Health Act (Cap 354A)); and • Computer-related crimes (see Computer Misuse Act (Cap 50A)).
Is there individual liability for corporate criminal offenses?	Yes. Directors and managers may be prosecuted for criminal offenses, such as bribery and fraud, or inchoate offenses, such as aiding and abetting the criminal conduct of the corporation. Additionally, under certain statutes, the neglect, consent, action, or omission of an officer can give rise to individual liability for corporate criminal offenses. When the offense is committed with the consent of the officer, or derives from negligent behavior, the officer and the company may be jointly prosecuted.
What are the primary criminal government enforcement agencies?	The primary agencies responsible for investigating corporate crimes are: • The Singapore Police Force and its constituent unit, the Commercial Affairs Department; • Monetary Authority of Singapore; • Corrupt Practices Investigation Bureau; • Accounting and Corporate Regulatory Authority; • Inland Revenue Authority; • Ministry of Manpower; and • National Environment Agency.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Corporations may be subject to fines, confiscation of benefit orders, and victim compensation orders. Generally, courts determine the punishment applicable to a corporation pursuant to statutory provisions providing minimum and maximum punishments based on sentencing guidelines and case law. Courts have discretion to depart from sentencing guidelines depending on the facts of each case. In case law, the Singapore High Court has provided a list of factors to be considered when determining punishment, which include: • The degree of contravention of the statute; • The intention or motivation of the offender; • The steps taken by the company upon discovery of the breach and the degree of remorse shown by the company; • Whether the company was merely an alter ego of its directors, with the general principle that deterrence should not be imposed twice (i.e., on both the company and the sole shareholder); • Whether the company was a small family business with little resources, with consideration to the fact that an imposition of a heavy fine would be oppressive; and • The community of interests that may be affected if a prohibitive fine is imposed on a company (including that of the shareholders, employees, and creditors of the company). Sections 15 and 61 of the Organized Crime Act of 2015 also provide for civil confiscation orders and organized crime prevention orders in response to criminal activity, even in the absence of a conviction.

What are the available forms of a criminal resolution?	Most corporate crimes involve indictment and prosecution, although companies may seek plea bargains. Singapore also has a pretrial voluntary procedure, pursuant to Section 160 of the Criminal Procedure Code, in which the prosecution and defense counsel may discuss the early resolution of all or part of a criminal case. In October 2018, Singapore's Criminal Procedure Code was amended to introduce DPAs. Deferment of prosecution had previously been accomplished through the use of a "conditional warning," particularly when a crime was investigated by multiple jurisdictions with different alternatives to prosecution. A DPA can be entered into before or after the offender is charged, and it must be approved by the Singapore High Court. The agreement is offered in exchange for strict compliance with conditions, which could include payment of financial penalties, creation of a victims fund or donation to a charity, disgorgement of profits, implementation of a compliance program, or appointment of external monitors. A prosecutor may also require that the company produce documents or assist in investigations against the company's officers, employees, or agents. A DPA will be approved only if it is in the interests of justice and its terms are fair, reasonable, and proportionate. For transparency, all DPAs must be made public after approval by the High Court, unless the Court orders a DPA's redaction or postponement of publication in the interest of justice, public safety, public security, propriety, or other sufficient reason.
What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences include the suspension, variation, or revocation of a license by a regulator. Additionally, listed companies may be disciplined by the Singapore Exchange through reprimands, fines, suspensions, expulsions, or mandated educational or compliance programs.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	There is a general presumption against the extraterritorial application of Singapore law. However, certain laws establish exceptions to this presumption, including the Transboundary Haze Pollution Act, the Prevention of Corruption Act, and the Organized Crime Act.
Can a parent company be criminally liable for the acts of a subsidiary?	In general, under Singapore law, the doctrine of separate legal personality means that a foreign parent company is not liable for the acts of its subsidiary unless the parent used the subsidiary as an instrument of crime in furtherance of the offense.

SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Generally, no. Corporations have many constitutional rights in criminal proceedings, including the right against self-incrimination, and are entitled to not say anything that might expose the corporation to a criminal charge, penalty, or forfeiture. However, some laws impose duties and obligations on persons (including corporations) to report or disclose their knowledge or suspicions of possible criminal conduct. These include the Terrorism (Suppression of Financing) Act; the Terrorism (Suppression of Bombings) Act; the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act; the Cybersecurity Act 2018; and the recently amended Personal Data Protection Act for significant data breaches. Where reporting is required, the failure to do so may result in the company being charged or convicted for aiding and abetting or consenting to the commission of an offense.
Is credit offered for self-reporting, cooperation, or remediation?	There is at present no regulatory guidance making clear the benefits to be derived from corporate self-reporting. However, self-reporting and cooperation are seen as mitigating factors in criminal investigations, prosecutions, and proceedings.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. In certain cases, however, such as under the Sale of Food Act, the law governing the conduct at issue provides statutory defenses that are more easily proven when a compliance program has been effectively implemented. The implementation of a compliance program may also be considered as a mitigating factor at sentencing.
Is failure to implement a corporate compliance program a basis for criminal liability?	In general, the implementation of a corporate compliance program is not a complete defense to criminal liability. However, the presence of a well-implemented compliance program may be a basis to assert a defense at the liability phase in the proceedings or a significant mitigating factor at the sentencing phase.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Singapore is a signatory to several cooperation treaties, such as the Hague Convention on Evidence and the Mutual Assistance in Criminal Matters Act (Cap 190A). In recent years, Singapore has frequently cooperated with the U.S. DOJ and other investigative agencies in corporate criminal enforcement actions.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The Office of the Attorney-General of Singapore acts as the principal legal advisor to the government and as the Public Prosecutor. As such, it provides control and direction of all criminal prosecutions and proceedings. Investigations are guided by the Criminal Procedure Code. However, a sectoral approach in Singapore means that the enforcement agenda and guidelines for such prosecutions depend on the sector in question (e.g., MAS guidelines on ML/TF for financial institutions; PDPC guidelines on prosecuting data breaches; CCCS guidelines on reviewing anti-trust cases).
Does the government incentivize corporations to identify individuals?	There is no official incentive to identify individuals. The primary incentives for a corporation to identify individuals are to satisfy the conditions of a DPA and to reduce the sentence imposed by demonstrating cooperation with authorities. Additionally, as liability of a corporation is generally premised on the acts of individuals, it is often essential for individuals to be identified prior to charging the corporation.
Does the government have a whistleblower program to incentivize whistleblowers?	There is no overarching whistleblower legislation in Singapore. Section 36 of the Prevention of Corruption Act provides for anonymity to whistleblowers in the corruption context, but that right to anonymity can be revoked by a court. Tax regulations also provide monetary awards for tax-evasion whistleblowers. Courts may also reduce a sentence or fine for a whistleblowing defendant, but no law expressly addresses such circumstances.
Last Updated	December 12, 2020

TAIWAN (REPUBLIC OF CHINA)

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	The principles for establishing corporate criminal liability are still debatable in Taiwan. Generally, the Supreme Court of Taiwan and scholars acknowledge that, based on the real entity theory, a corporation can independently bear criminal liability when expressly so provided by the law. In terms of legislation, corporate criminal liability has been widely stipulated in Taiwanese laws. Taiwan has adopted Dual Punishment, which imposes criminal liability on both the individual and the corporation when the individual commits the crime during the course of conducting business operations.

In what circumstances can a corporation be held criminally liable?	A corporation can be held criminally liable:
	• When it commits the offenses prescribed in certain laws and the responsible person is also found liable for the offense. This can occur under, e.g.:
	  • Article 25 of the Banking Act of The Republic of China;
	  • Article 179 of the Securities and Exchange Act; and
	  • Article 48 of the Trust Enterprise Act.
	• Where the representative of the corporation or the agent, employee, or any other staff of the corporation or natural person commits any of the crimes in the course of business; in this situation, both the actor and the corporation or the natural person shall be punished with a fine. This can occur under, e.g.:
	  • Article 13-4 of the Trade Secrets Act;
	  • Article 87 of the Pharmaceutical Affairs Act;
	  • Article 81 of the Labor Standards Act;
	  • Article 55 of the Labor Pension Act;
	  • Article 39 of the Human Trafficking Prevention Act;
	  • Article 23 of the Plant Protection and Quarantine Act;
	  • Article 41 of the Statute for Prevention and Control of Infectious Animal Diseases; and
	  • Articles 83 and 84 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area.

Is there individual liability for corporate criminal offenses?	Yes. Under Taiwanese laws, an individual would be held liable for a criminal offense committed by the corporation. For instance, Article 125 of the Banking Act of The Republic of China provides that "should a juristic person commit the offenses prescribed in the preceding two paragraphs, its responsible person shall be punished."

What are the primary criminal government enforcement agencies?	The Ministry of Justice ("MOJ") is the primary criminal government enforcement agency. Its branches include: • **Department of Prosecutorial Affairs**, which oversees the prosecutorial system and prosecutorial affairs, revises the Criminal Code, and oversees the administrative affairs of bar associations; and • **Department of International and Cross-Strait Legal Affairs**, which handles and processes all formal requests for assistance in accordance with the provisions of the Law in Supporting Foreign Courts on Consigned Cases and any applicable mutual legal assistance agreements.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Under Taiwanese laws, corporations are only subject to fines and forfeiture of illegal proceeds as a result of criminal convictions. Individuals who are responsible for the crime may face imprisonment, fines, and forfeiture of the illegal proceeds.
What are the available forms of a criminal resolution?	Taiwan does recognize DPAs before prosecution. If an accused party has committed an offense other than those punishable by death or life imprisonment, or with a minimum punishment of imprisonment of not less than three years, and the public prosecutor, after considering the matters specified in Article 57 of the Criminal Code and the maintenance and protection of public interest, deems that deferred prosecution is appropriate, he may make a ruling to render a deferred prosecution for a period not more than three years and not less than one year, starting from the date the ruling of deferred prosecution is finalized. In cases where a disposition of deferred prosecution is issued, the accused may be ordered by the prosecutor to comply with or perform certain actions within a certain period of time, such as apologizing to the victim, paying the victim an appropriate sum, and paying a certain sum to the government treasury. The MOJ acknowledges that, pursuant to the rule of Dual Punishment, when deferred prosecution is rendered to the accused individual, it shall be rendered to the corporation as well.
What are the potential collateral consequences of a corporate criminal conviction?	There do not appear to be explicit policies regarding corporate convictions and collateral consequences. However, a public company could be delisted by the Taiwan Stock Exchange Corporation when a certified accountant issues an inspection report on major uncertainties in the ability to continue operations because of the criminal conviction.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Article 5 of the Criminal Code of the Republic of China provides that "[t]his Code shall apply to any of the following offenses outside the territories of the Republic of China," and Article 7 provides that "[t]his Code shall apply where any national of Republic of China commits an offense which is not specified in one of the two preceding articles but is punishable for not less than 3 years of imprisonment outside the territory of the Republic of China; unless the offense is not punishable by the law of the place where the offense is committed."

Can a parent company be criminally liable for the acts of a subsidiary?	Taiwan follows the general proposition that parent companies are not liable for the acts of their subsidiaries based on the principle that a parent and a subsidiary are separate legal entities.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Generally, no. However, the Securities and Exchange Act does require the company's certified accountant to issue a report or opinion with respect to any material falsehood or error in a financial report, document, or information reported or published by the company.
Is credit offered for self-reporting, cooperation, or remediation?	In Taiwan, self-reporting is not common because there are few laws providing corporations leniency or mitigation for self-reporting or cooperating with investigative agencies. The Fair Trade Act is one of the few laws that allows for reduced penalties for those companies that reveal concrete illegal conduct, submit evidence, and assist the investigation of alleged violations of the Act.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes. For laws which punish both the individual and the corporation, defenses are generally also stipulated in such laws. Of note, Article 13-4 of the Trade Secrets Act provides that "if the representative of a juristic person or natural person has done his/her utmost to prevent a crime from being committed, the juristic person or natural person shall not be punished." That is, a corporation may argue that it has done its utmost to implement a compliance program to prevent a crime from being committed, yet failed and, thus, it should not be punished.
Is failure to implement a corporate compliance program a basis for criminal liability?	Taiwanese laws are silent on whether or how the failure to implement a corporate compliance program may lead to criminal liability. Nevertheless, an adequate corporate compliance program may help a company mitigate the risks of criminal misconduct.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. The MOJ is the sole Central Authority for mutual legal assistance in criminal matters in Taiwan. The Department of International and Cross-Strait Legal Affairs of the MOJ handles and processes all formal requests for legal assistance in accordance with the Mutual Legal Assistance in Criminal Matters Act and other applicable laws, treaties, agreements, or arrangements. The current Mutual Legal Assistance in Criminal Matters Act offers a broad scope of assistance to foreign requesting parties, including service of documents, evidence gathering, search and seizure, restraint or freezing of assets, transfer of persons in custody for testimonial purposes, enforcement of foreign forfeiture/confiscation orders or judgments, and other requested proceedings on criminal matters. With this new Act in place, Taiwan can now provide more stable, clearer, and swifter legal assistance to its counterparts.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There does not appear to be any such guidance.
Does the government incentivize corporations to identify individuals?	Probably no. As mentioned above, self-reporting is not common because there are few laws providing corporations leniency or mitigation for self-reporting or cooperating with investigative agencies. The Fair Trade Act is one of the few laws that allows for reduced penalties for companies that reveal concrete illegal conduct, as well as submit evidence and assist the investigation of alleged violations thereof.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. In 2019, the Executive Yuan approved a draft bill on protections for whistleblowers in the public and private sectors. The draft bill defines the scope of whistleblowing in the public and private sectors, the procedures for whistleblowing, and protections and rights for whistleblowers. In addition to encouraging people to report wrongdoing and help combat illegal activities, the bill aims to protect the interests of whistleblowers in the workplace and minimize the impact on their everyday lives. The bill, drafted by the MOJ, has not been legislated yet but will be sent to the Legislature for deliberation.
Last Updated	December 10, 2020

CENTRAL AMERICA

COSTA RICA

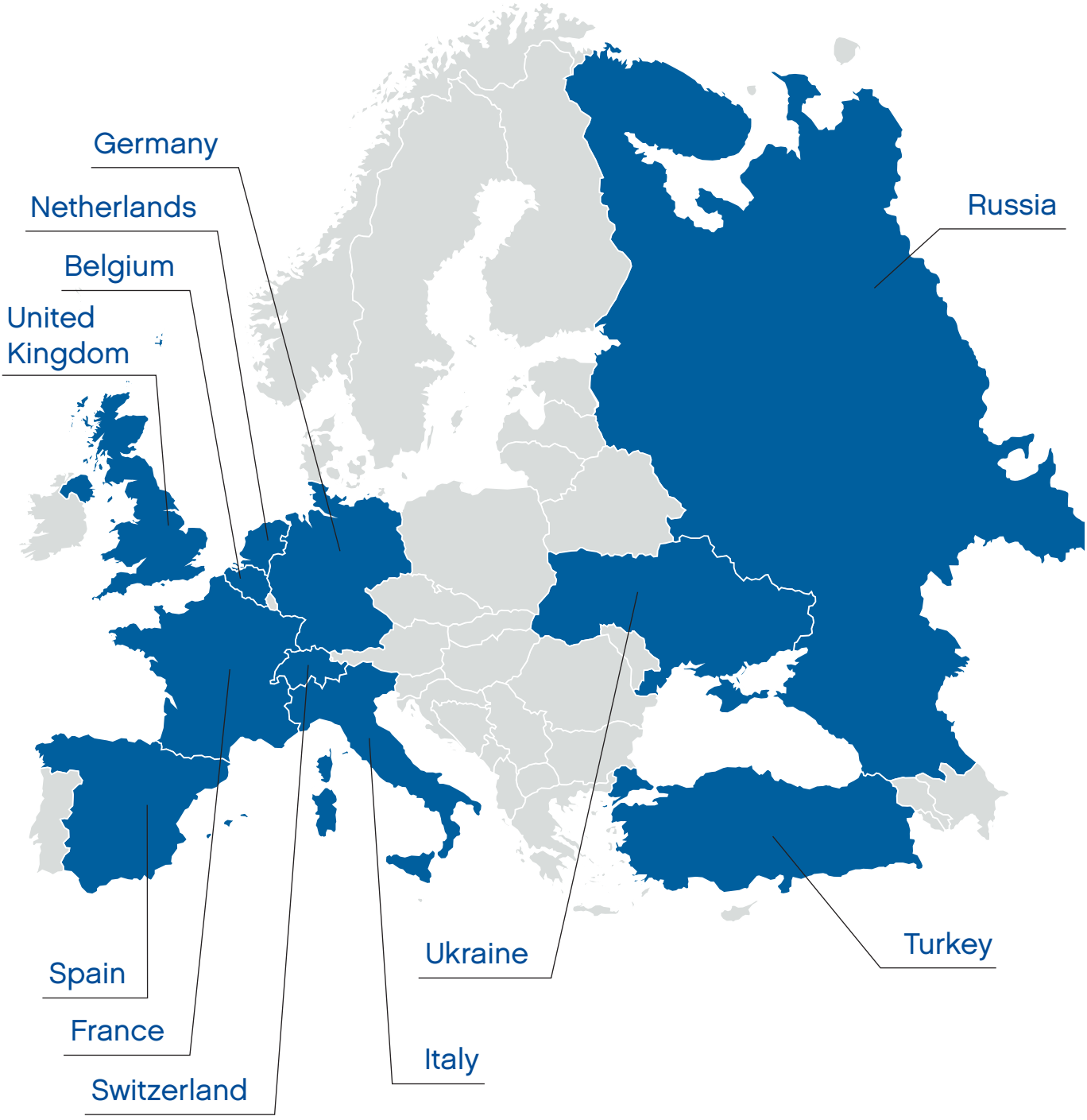
CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability is based on Law No. 9,699, of June 11, 2019, which is also known as the "Law of Legal Liability of Companies for Domestic Bribery, Transnational Bribery and Other Crimes" ("*Ley de responsabilidad de las personas jurídicas sobre cohechos domésticos, soborno transnacional y otros delitos*").
In what circumstances can a corporation be held criminally liable?	Under Law No. 9,699, a corporation can be held criminally liable when legal representatives, employees, or even a third party acting on behalf of the legal entity engages in a corrupt practice or false accounting that results in a direct or indirect benefit to the legal entity. Law No. 9,699 also imposes a duty on legal entities to avoid the commission of crimes provided for under Law No. 9,699. If legal entities fail to do so, they may be held criminally liable for omission, pursuant to the Costa Rican Criminal Code.
Is there individual liability for corporate criminal offenses?	Yes. Individuals and corporations may be held criminally liable for the same criminal conduct under Law No. 9,699 where the individual was involved in the commission of the crime.
What are the primary criminal government enforcement agencies?	The primary criminal government enforcement agencies are the Attorney General's Office and the Attorney's Office for Probity, Transparency and Anti-Corruption.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Under Law No. 9,699, the potential range of fines is currently approximately US$790,000 to US$7,900,000. Law No. 9,699 sets forth various factors for the court to consider when determining the fine, including (i) the number and hierarchy of workers involved in the crime; (ii) whether the crime was committed directly by owners, managers, or members of administrative bodies, or through representatives, or suppliers; (iii) the nature, size, and economic conditions of the company; (iv) the seriousness of the illegal act at the national or international level; (v) if the company has an internal structure for crime prevention, management, and control; (vi) the economic damage caused; and (vii) the seriousness of the social consequences. The above range of fines applies to all cases. However, when the crime affects a contract of a government entity, the fine will be applied to the company within the range or up to 10% of the amount of its offer or of the award when said amount exceeds the maximum range of the fine. This means that crimes that affect public procurement can be more severely penalized.

	Additional sanctions under Law No. 9,699 include: • Debarment from contracting with the public administration for up to 10 years; • Loss of tax benefits and government aids for up to 10 years; • Cancellation of operating permits; and • Dissolution of the legal entity.
What are the available forms of a criminal resolution?	A corporation can negotiate either probation or a plea bargain. As to probation, the corporation must admit to the facts described in the criminal charges (although such admission may not be used against the corporation in the event it fails to comply with the remediation plan and criminal prosecution is resumed). The corporation must also have a remediation plan in place, which must be accepted by the victim, the judge, and the prosecutor. The remediation plan for corporations is limited to a donation to a public institution or a community aid. The probation period may last from two to five years. During such period, the corporation must not commit another crime; if it does, criminal prosecution is resumed. As to the plea bargain agreement, a corporation may enter the agreement at any time before trial. The corporation must admit to the facts presented in the criminal charges. The applicable sanctions under the agreement must be negotiated with the prosecutor and may be reduced at the prosecutor's discretion. The plea bargain agreement must also be confirmed by a judge.
What are the potential collateral consequences of a corporate criminal conviction?	See above discussion regarding "What is the scope of potential fines, penalties, and sanctions?" In addition, the legal entity may be required to publish, at its expense, a summary of the conviction in a national newspaper in Costa Rica.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Under the Costa Rican Criminal Code, criminal offenses committed by a corporation against the government (such as public corruption) can be prosecuted even if occurring outside of Costa Rica. Costa Rican law also punishes the crime of transnational bribery committed against foreign public officials.
Can a parent company be criminally liable for the acts of a subsidiary?	Yes. The parent company may be liable when a subsidiary, under the direct or indirect control of the parent company, commits a crime that causes the parent company to receive a direct or indirect benefit, or when the subsidiary is acting on behalf of the parent company.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. However, if a corporation wishes to seek a reduction of the applicable sanction of up to 40% for public corruption offenses, pursuant to Law No. 9,699, the corporation must self-report the issue.

Is credit offered for self-reporting, cooperation, or remediation?	Yes. Under Law No. 9,699, if the crime is committed by low- or medium-ranking employees, the corporation can reduce the possible penalty by up to 40% by self-reporting, cooperating, or adopting a compliance program before trial. If the crime is committed by high-ranking executives or third parties acting on behalf of the corporation, the only way for the corporation to obtain the 40% reduction is if it adopted an adequate compliance program before the crime—such that the commission of the crime occurred through the circumvention of internal controls.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. However, it is worth noting that criminal penalties may be reduced if the company self-reports or cooperates during the investigation, and such actions will only be achieved if a compliance program is in place. Importantly, Law No. 9,699 establishes the following minimum requirements for a compliance program: • Conduct specific risk analysis and assessment for the corporate activity in Costa Rica; • Create a Code of Ethics, policies, and procedures to minimize the risk of crimes; • Adopt financial and payment controls; • Develop a specific policy to prevent corruption in connection with public contracts; • Determine the scope of application for third parties of the Code of Ethics and all the compliance policies; • Implement a training program; • Review the compliance program; • Establish a disciplinary system; • Perform an external audit; • Establish the compliance officer position, with financial and acting independence; and • Maintain a corporate commitment to ethics.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. This is not expressly provided for by law; nonetheless, corporations have a legal duty to avoid committing public corruption offenses. Otherwise, corporations may be held criminally liable for failing to prevent the crime. Companies that fail to prevent a criminal offense when, under the circumstances, they had the ability to do so may face criminal liability for omission. Additionally, the law provides that a corporation may be held criminally liable when crimes were committed due to a serious breach of the duties of supervision, surveillance, and control of its activity. All of this must be regulated by compliance programs, pursuant to Law No. 9,699.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Costa Rica's judicial branch has a specific office of international cooperation. In addition, Costa Rica has international mutual legal assistance agreements with multiple countries, including Honduras, Nicaragua, Guatemala, Panama, Argentina, Spain, Colombia, and El Salvador.

	Furthermore, Costa Rica is a party to the Inter-American Convention on Mutual Assistance in Criminal Matters, Inter-American Convention on the Receipt of Evidence Abroad, Inter-American Convention on Rogatory Letters, and Additional Protocol to the Inter-American Convention on the Receipt of Evidence from Abroad.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There is no government guidance on prosecuting corporations, as Law No. 9,699 was recently enacted and a regulation ("*reglamento*") governing the statute is yet to be approved.
Does the government incentivize corporations to identify individuals?	No.
Does the government have a whistleblower program to incentivize whistleblowers?	No.
Last Updated	November 16, 2020

EUROPE


Germany
Netherlands
Belgium
United Kingdom
Russia
Spain
France
Switzerland
Italy
Ukraine
Turkey

BELGIUM

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Under the Belgian Criminal Code, a corporation (including certain types of public law-governed entities) may be held criminally liable for offenses that are intrinsically related to its aim or its interests or offenses that are committed on the corporation's behalf.
In what circumstances can a corporation be held criminally liable?	The Belgian legislator has opted for a general application of corporate criminal liability, which means that a corporation can potentially be held liable for all criminal offenses under Belgian law that can be attributed to it. This includes: • Tax fraud; • Money laundering; • Forgery of documents; • Bribery; • Financial offenses; • Environmental offenses; and • Social law infringements.
Is there individual liability for corporate criminal offenses?	Yes. Culpable individuals can be held jointly liable with the corporation. As a general rule, individuals incur criminal liability only when their own conduct meets the test for the criminal provision infringed. Some provisions, however, designate a person who is assumed to be responsible for the corporate violation or require the corporation to designate such a person. In addition, members of the management body may be held liable for certain violations of the Belgian Code on Companies and Associations.
What are the primary criminal government enforcement agencies?	There is only one criminal enforcement authority, which is composed of several public prosecutors—each of whom has jurisdiction over a certain part of the territory and certain areas of expertise. Criminal investigations are initiated by the public prosecutor or by the victim of the offense (by means of a civil complaint) and are conducted under the authority of either the public prosecutor (in the case of a police investigation) or the judicial magistrate (in the case of a judicial investigation), with the assistance of the judicial police. In addition, regulators in certain sectors, such as tax, finance, nuclear power, and telecommunications, have investigative authority and are required to report the results of their investigations to the public prosecutor's office if there is potential criminal conduct.

FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Criminal sanctions for corporations include: • Fines; • Confiscation of goods; • Dissolution; • Prohibition against conducting a specific activity (with the exception of public service activities); • Closure of one or several establishments; and • Publication and distribution of the conviction. Many white-collar offenses are punishable only by fines, and courts generally impose fines on corporations for the same amount that a natural person would receive. In rare circumstances, a court may require dissolution of the corporation or closure of part of it. Courts can also require that the judgment be publicly announced. Notably, in March 2019, a draft bill introducing a new criminal code was filed with the Belgian Parliament. Among other things, the draft bill would expand the types of punishments available for white-collar offenses.
What are the available forms of a criminal resolution?	The Belgian Code of Criminal Procedure ("BCCP") provides for two out-of-court settlement mechanisms: dismissal and mediation. A corporation or an individual may also enter into a plea bargain or may be offered a settlement.
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties and sanctions?"
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Where provided by law, criminal offenses that have been committed outside Belgian territory may be punished in Belgium. This includes: • When a Belgian national or resident has committed certain serious crimes or offenses in another country (e.g., human trafficking, violation of international humanitarian law, corruption of foreign officials located in Belgium or of Belgian officials working abroad) (for some of these crimes or offenses, Belgian courts will have jurisdiction even when the perpetrator is not located in Belgium); • When a Belgian national or resident has committed a crime or an offense (within the meaning of Belgian criminal law) outside of Belgium and such crime or offense is also sanctioned by the legislation of the country where it was committed; • When a crime was committed in a foreign country against a Belgian national, under the condition that such crime is, pursuant to the law of the foreign country, punishable by imprisonment of at least five years and that its perpetrator is located in Belgium or if a complaint was lodged in Belgium; and • When an international or European convention imposes such competence, regardless of the nationality or residence of the perpetrator or the location where such an act was committed.

Can a parent company be criminally liable for the acts of a subsidiary?	Yes. A parent company can be liable for its subsidiary's conduct either as a direct perpetrator or under the rules of criminal participation. The parent company may be considered a direct perpetrator when it violates a criminal provision through its own conduct or when it uses a subsidiary as an instrument to commit the act in question. A parent company may be considered an accessory or accomplice to an offense committed by its subsidiary if it provided any form of help to its subsidiary or incited its subsidiary to commit the offense.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. However, whether a company self-reported may be relevant to plea or settlement discussions or sentencing, as it may be seen as a form of cooperation that warrants more lenient sanctions.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. Such promises may be made by the public prosecutor to an offender regarding the prosecution of the case or its enforcement in exchange for information related to the offender's or a third party's involvement.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. However, an effective compliance program could demonstrate the corporation's efforts to prevent misconduct and may be taken into consideration by prosecuting authorities when deciding whether to offer declination, settlement, or the option for a guilty plea. The criminal court may also take the existence of a compliance program into account in assessing the corporation's mens rea or when determining the penalty to impose.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. However, under sector-specific laws, administrative fines may be levied if certain compliance policies or measures are not in place, relating to, for example, whistleblowing in the financial sector or detecting and reporting money laundering. Further, in certain cases, the failure to prevent an offense from being committed could qualify as an unintentional offense or as criminal participation by neglect if the corporation was aware of the conduct—or of the possibility of it occurring—and through its failure to act allowed the offense to occur.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Belgian criminal authorities cooperate with their counterparts in the European Union and around the world, although much of the cooperation relates to terrorism matters and non-white-collar offenses. Belgium is a party to the European Convention on Mutual Assistance in Criminal Matters and therefore has the power to request assistance in criminal matters from most other European countries. In regards to extradition, Belgium is a party to more than 50 bilateral treaties and many multilateral conventions.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There is no formal government guidance on prosecuting corporations. After conducting a preliminary investigation, the public prosecutor has full discretion to decide whether or not to prosecute a corporation. This choice will generally depend on the results of the investigation and on the prioritization of prosecutions; however, no formal policy exists in this regard. Criminal proceedings against corporate entities, like proceedings against physical persons, are conducted in accordance with the BCCP.
Does the government incentivize corporations to identify individuals?	Generally, yes. Some provisions require corporations to designate a person who is assumed to be responsible for certain violations. Prosecutors generally take action against both individuals and corporations where possible.
Does the government have a whistleblower program to incentivize whistleblowers?	There is currently no general protection of whistleblowers under Belgian criminal law, although specific regimes exist in certain cases. However, Belgium will have to comply with the new European Union Whistle-Blower Protection Directive by December 2021. This new Directive introduces sanctions for retaliating against whistleblowers and protects them from liability related to reporting infringements under EU law.
Last Updated	November 11, 2020

FRANCE

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Under Article 121-2 of the French Criminal Code, a corporation may be held criminally liable for offenses committed on their behalf by their organs or representatives.
In what circumstances can a corporation be held criminally liable?	In France, a corporation may be held criminally liable for any offense under the conditions of Article 121-2 of the French Criminal Code. The main corporate criminal offenses include: • Fraud; • Bribery; • Misuse of corporate assets; • Money laundering; and • Market manipulation offenses.
Is there individual liability for corporate criminal offenses?	Yes. Corporate criminal liability does not exclude the liability of individual perpetrators or accomplices of the same act. Consequently, individuals and corporations can be criminally liable for the same offense.
What are the primary criminal government enforcement agencies?	The Public Prosecutor is in charge of prosecuting corporate criminal offenses. Conversely, the French Financial Prosecutor ("*Parquet National Financier*") specifically prosecutes serious and complex corporate misconduct consisting of breaches of probity and damage to public finances that are likely to have national or international consequences as well as infringement upon the operation of financial markets. The French Financial Prosecutor's Office is distinct from the Public Prosecutor's Office but is equal in authority. The Public Prosecutor cooperates with governmental agencies—such as "TRACFIN," a special unit of the Ministry for Economy, Finance and Industry, and police services like the Central Office for Fighting Serious Financial Crimes ("*Office Central de Répression de la Grande Délinquance Financière*")—to investigate corporate criminal offenses. Other independent public agencies and regulatory bodies may also be involved in investigations related to corporate criminal offenses, including the: • Financial Markets Authority ("*Autorité des Marchés Financiers*"); • French Anticorruption Agency ("*Agence Française Anticorruption*"); • French Prudential Control Authority ("*Autorité de Contrôle Prudentiel et de Résolution*"); and • French Data Protection Authority ("*Commission Nationale de l'Informatique et des Libertés*").

FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Corporations may face financial consequences as a result of criminal convictions, but they cannot be imprisoned per se. The French Criminal Code sets specific maximum fines for each offense. Corporate fines are higher than individual fines. Under Article 131-38 of the French Criminal Code, the maximum fine applicable to companies is five times the maximum fine applicable to individuals for the same offense. The amount of the fine is set by judges in light of the circumstances of the case. In the case of a French DPA ("*Convention Judiciaire d'Intérêt Public*"), penalties are calculated on the basis of the corporate benefits resulting from the offense.
What are the available forms of a criminal resolution?	Corporations, in certain cases, may go through settlement procedures that include guilty pleas ("*Comparution sur Reconnaissance Préalable de Culpabilité*" or "*Composition pénale*") and DPAs. In addition, the Public Prosecutor may decline to prosecute a corporation at the outcome of a preliminary investigation, and the investigating judge may also decide not to refer a corporation to the criminal court at the end of a judicial investigation. Such decisions not to prosecute are left to the discretion of the prosecutor and judge.
What are the potential collateral consequences of a corporate criminal conviction?	The collateral consequences imposed on a corporation depend on a number of factors, including the scope of the misconduct and the seriousness of the offense. Under Article 131-39 of the French Criminal Code, collateral penalties may include: • Company dissolution; • Prohibition against exercising a professional activity; • Judicial supervision measures; • Closure of facilities; • Exclusion from public procurement; • Prohibition against offering shares to the public, or having financial securities admitted to trading on a regulated market; • Prohibition against issuing checks or using credit cards; • Assets forfeiture; • Publication of the decision; and • Disqualification from receiving State aids and/or subventions. Moreover, under Article 139-1-2 of the French Criminal Code, corporations may also be required to create and implement a corporate compliance program under the supervision of the French Anticorruption Agency.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. French courts have jurisdiction over offenses committed outside the country where French law is applicable. As a result, French jurisdiction arises in the following circumstances:

	• If the offense is committed by a French national, French jurisdiction will arise when the offense is also punishable under the law of the country where the offense was committed and the prosecution is instigated in France by the Public Prosecutor following the filing of a complaint by the victim or an official accusation by the authority of the country where the offense was committed. • If the victim of the offense is a French national, French jurisdiction will arise when the prosecution is instigated in France by the Public Prosecutor following the filing of a complaint by the victim or an official accusation by the authority of the country where the offense was committed. • Regardless of the citizenship of the perpetrator or the victim, French jurisdiction will arise when foreign conduct infringes upon the fundamental interests of France. Moreover, when a primary offense is committed in a foreign state and is aided and abetted in France, French jurisdiction will arise when the primary offense is punishable by both French law and the foreign law, and there is a final judgment of the foreign court convicting the perpetrator of the primary offense. Similarly, French case law sometimes extends the extraterritoriality of French criminal law to the prosecution of offenses committed in a foreign state when such offenses constitute a consistent whole with an offense committed in France ("*principe d'indivisibilité*"). Notwithstanding the foregoing principles, there are a few offenses for which French jurisdiction will always arise. For instance: • Under Articles 435-6-2 and 435-11-2 of the French Criminal Code, French courts have jurisdiction to prosecute French nationals, persons habitually residing in France, or persons having all or part of their economic activity in France if such individuals commit corruption or influence-peddling offenses against a person holding public authority or discharging a public service mission in a foreign state. • Under Article 689-11 of the French Code of Criminal Procedure, French courts have jurisdiction to prosecute serious crimes affecting the international community, such as crimes against humanity or war crimes. • Under certain international and European treaties, French courts have specific jurisdiction to prosecute designated offenses committed outside of France.
Can a parent company be criminally liable for the acts of a subsidiary?	Under Article 121-1 of the French Criminal Code, criminal liability is personal and therefore a parent company cannot be held criminally liable for the acts of its subsidiary on that basis alone. However, a parent company can be prosecuted as an accomplice if it assisted the subsidiary. Of note, the French Supreme Court ("*Cour de cassation*") recently held that an acquiring company may be liable for offenses committed by the absorbed company before the merger took place. In that instance, the acquiring company could be subject to a fine or asset forfeiture. In any case, such criminal liability can always be incurred if the purpose of the merger was to fraudulently avoid the criminal liability of the acquired company.

SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. Article 6, Section 1 of the European Convention on Human Rights grants individuals and corporations the right to remain silent and not to incriminate themselves; therefore, self-reporting is not required in France. However, the authorities will take into account a company's self-reporting when assessing the appropriateness of granting a French DPA.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. According to the French Financial Public Prosecutor and the French Anticorruption Agency, cooperation is a prerequisite for entering into a French DPA. Moreover, prosecutors consider a company's cooperation when assessing the amount of the public interest fine imposed in conjunction with the DPA, as part of their application of mitigating factors. Generally speaking, courts may also consider a company's cooperation when imposing fines and other penalties.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. The mere existence and implementation of a compliance program is not sufficient on its own to avoid the prosecution of a corporation for criminal misconduct. However, the adequacy and effectiveness of the corporation's compliance program at the time of the offense can be taken into consideration by prosecutors and judges, including for the assessment of the criminal intent to commit the requisite offense.
Is failure to implement a corporate compliance program a basis for criminal liability?	No, it is only a basis for administrative liability. Under the Sapin II Law, the implementation of a corporate anticorruption compliance program is required for large companies (i.e., companies over certain thresholds in terms of revenues or employees). Large companies that fail to set up and implement such a program can be fined up to €1,000,000, and their officers can be fined up to €200,000 by the sanctions committee of the French Anticorruption Agency.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. France has ratified numerous bilateral treaties in the field of international criminal cooperation (i.e., as a European Union Member State, within the Council of Europe, and within the United Nations). These treaties concern matters of extradition, mutual legal assistance, and transfer of convicted persons. France also participates in/with Interpol, which is headquartered in France, and in this way facilitates worldwide police cooperation and crime control by sharing data on crimes and criminals. For instance, the French Financial Public Prosecutor recently conducted joint investigations with foreign judicial authorities such as the U.S. DOJ and the UK Serious Fraud Office, resulting in DPAs. France also polices its own compliance when interacting with foreign authorities. For instance, the French Anticorruption Agency is required to ensure observance of the "French blocking statute," under which a company that has a registered office in France shall not communicate, in any form whatsoever, to foreign authorities information of an economic, commercial, industrial, financial, or technical nature, if the communication: (i) is likely to harm French interests as defined by law, or (ii) tends to establish evidence for or in connection with foreign judicial or administrative proceedings (unless otherwise provided by international treaties or agreements and applicable laws and regulations).

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There is no specific government guidance on prosecuting corporations. However, the French Financial Public Prosecutor and the French Anticorruption Agency jointly issued guidelines on the implementation of the *Convention Judiciaire d'Intérêt Public*.
Does the government incentivize corporations to identify individuals?	No.
Does the government have a whistleblower program to incentivize whistleblowers?	No. Under the Sapin II Law, companies with more than 50 employees must create a whistleblowing program. However, even though whistleblowers are protected under certain conditions—from criminal prosecutions if they disclose a secret protected by the law, and from dismissal—they are not financially incentivized to disclose information.
Last Updated	December 11, 2020

GERMANY

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	No. Presently, there is no law in Germany that specifically establishes corporate criminal liability. Criminal liability under German law pertains solely to individuals and is governed by the German Criminal Code (*Strafgesetzbuch* or "StGB"). The StGB does not apply to corporations. However, corporations can be fined for administrative offenses under the Law on Administrative Offenses (*Ordnungswidrigkeitengesetz* or "OWiG"). That said, on June 16, 2020, the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz* or "BMJV") published the draft bill titled "Act for Strengthening the Integrity in the Economy," otherwise known as the Corporate Sanctions Act (VerSanG-E—*Verbandssanktionengesetz* or "CSA"). The draft bill was recently presented to the German Bundestag and is now in the final stages of the legislative process. If adopted by the Parliament, the CSA would establish corporate criminal liability and oblige the prosecuting authorities to investigate and prosecute corporations accordingly. After the German Bundesrat discussed the CSA as proposed by the BMJV and submitted several proposals for amendments on September 18, 2020, the federal government introduced the CSA to the German Bundestag on October 21, 2020. In its submission, the federal government responded to the proposed amendments and outlined which of the amendments will be discussed in more detail in the legislative process. It is expected that the CSA will soon be passed into law.
On what principles or legislation is corporate criminal liability based?	Pursuant to the still-applicable legal framework, corporations can be held liable for offenses committed by their representatives pursuant to Section 30 of the OWiG. Under Section 30 of the OWiG, corporations can be fined for acts of their representatives if the representative either violated obligations imposed on the corporation when acting on behalf of the corporation or if the crime or administrative offense committed by the representative benefited the corporation or was at least intended to do so. Consequently, public prosecutors must establish the personal liability of representatives before holding the corporation liable. Usually, public prosecutors argue that board members are personally liable due to a violation of their supervisory duties pursuant to Section 130 of the OWiG. Fines are imposed on the corporation pursuant to Sections 30 and 130 of the OWiG. The CSA, however, would establish an independent legal basis for corporate criminal liability for corporate crimes. Section 2, paragraph 1 of the CSA defines corporate crimes as any crime that violates obligations imposed on the corporation or that benefited or intended to benefit the corporation.

In what circumstances can a corporation be held criminally liable?	The bases of corporate administrative liability may include, but are not limited to: • Fraud, Sec. 263 of the StGB; • Subsidy Fraud, Sec. 264 of the StGB; • Embezzlement/Breach of Trust, Sec. 266 of the StGB; • Bribery and Corruption, Secs. 299 *et seq.*, 333, 334 of the StGB; • Hardcore Cartels, Sec. 298 of the StGB; • Tax Evasion, Sec. 370 of the AO (German Fiscal Code); • Violation of Supervisory Duties, Secs. 30, 130 of the OWiG; • Competition Restraints and Abuse of Market Power, Sec. 81 of the Act against Restraints of Competition ("GWB"); and • Market Manipulation and Insider Trading, Sec. 119 of the Securities Trading Act ("WpHG").
Is there individual liability for corporate criminal offenses?	Yes. In most cases, there is individual liability for corporate criminal offenses. Liability may be established if an individual personally committed a corporate criminal offense—e.g., fraud, Sec. 263 of the StGB, to benefit the corporation—or aided and abetted an offense, Sec. 27 of the StGB. Members of the executive board may also be personally liable if they violated their supervisory obligations under Section 130 of the OWiG. Pursuant to Section 130, members of the executive board must take the supervisory measures necessary to prevent corporate crimes and administrative offenses being committed by representatives or employees of the company. This presupposes that the requisite supervision would have prevented, or at least would have considerably impeded, the corporate crime or administrative offense committed by an employee.
What are the primary criminal government enforcement agencies?	There are several government enforcement agencies in Germany. The primary criminal government enforcement agencies are the public prosecutor's offices pursuant to Sec. 161 of the German Criminal Procedure Code (*Strafprozessordnung* or "StPO"). Each of Germany's 16 federal states has its own districts with its own public prosecutor's offices. Their jurisdiction is determined by territory—i.e., the place where the potential crime was supposedly committed. Besides the public prosecutor's offices, there are specialized administrative authorities and regulatory offices that are responsible for investigating and prosecuting potential criminal offenses outside the general scope of the StGB. Such authorities are the Federal Cartel Office ("FCO"), the Federal Financial Supervisory Authority ("BaFin"), Customs Authorities, and Tax Authorities.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
WWhat is the scope of potential fines, penalties, and sanctions?	Corporations may face financial consequences as a result of convictions but cannot be imprisoned or dissolved. Corporations can be fined up to €10 million for intentional offenses and up to €5 million for negligent offenses pursuant to Section 30, paragraph 2 of the OWiG. In addition, any financial benefits the corporation gained from the corporate crime or administrative offense can be disgorged, which is often the case. Thus, the maximum fine can be exceeded.

	Pursuant to Section 8 of the CSA, corporations will face fines or a warning with a deferred fine. According to Section 9, paragraph 1 of the CSA, corporations with an annual group turnover not exceeding €100 million can be fined up to €10 million for intentional offenses and up to €5 million for negligent offenses. In addition, Section 9, paragraph 2 of the CSA stipulates that corporations with an annual turnover exceeding €100 million can be fined up to 10% of their annual group turnover for intentional offenses and up to 5% of their annual group turnover for negligent offenses. Pursuant to Section 10, paragraphs 1 and 2 of the CSA, the court may also issue a warning while deferring a potential fine for a time period to be determined by the court.
What are the available forms of a criminal resolution?	There are no statutory rules regarding other forms of a criminal resolution for corporate crimes such as plea agreements, DPAs, NPAs, or a declination. Still, it is common practice that authorities and corporations may negotiate possible sanctions to a certain extent, e.g., the amount of fines. However, there are no binding guidelines or public information on such negotiations. With respect to individuals, under Sections 153 and 153a of the StPO, the public prosecutor can, with the consent of the responsible court, waive charges pertaining to minor offenses that are not of public interest or if the public interest in prosecuting the offense can be accommodated by imposing specific obligations on the accused. Sections 35 and 36 of the CSA will explicitly expand the ability of the public prosecutor to waive charges as stipulated by Sections 153 and 153a of the StPO to the prosecution of corporations for corporate crimes. The proposed amendments of the German Bundesrat to the CSA (discussed above) may extend prosecutors' ability to waive charges against corporations, compared to what is currently provided for in the CSA. Under the proposed amendments, a prosecutor could waive charges where: (i) the corporate crime itself may not be negligible but is not of considerable importance compared to the individual culpability, or (ii) the corporation did not play a significant role or is not of significant relevance to the corporate crime.
What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences of an administrative sanction imposed on a corporation may include suspension or debarment from public tenders, pursuant to Section 123 of GWB, or disgorgement, pursuant to Sections 73 and 73b of StGB. The CSA would establish further collateral consequences for a corporate criminal conviction. Specifically, under Section 10, paragraph 4 in connection with Section 12 of the CSA, the court may, in addition to fines, impose obligations on the corporation to compensate the harm caused by the corporate crime. Moreover, pursuant to Section 10, paragraph 4 in connection with Section 13 of the CSA, the court may issue certain instructions to the corporation for the duration of the deferment. For instance, the court may instruct the corporation to undertake certain compliance measures, which must be overseen and certified by an independent compliance monitor. The court may also publish the conviction of the corporation to the general public, in the case of a large number of damaged parties, in accordance with Section 14 of the CSA.

EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. German law enforcement agencies may investigate all cases to which German law applies. In general, German criminal law applies to crimes committed on German territory pursuant to Section 3 of the StGB. However, there are exceptions where German law also applies to crimes committed outside German territory. These exceptions include crimes committed abroad against German nationals or German corporations, or crimes that were committed by German nationals or German corporations, but only if the offense is also considered a criminal offense in the country where it was committed. In addition, German law applies when the crime committed abroad has an extraterritorial effect that extends to German territory, pursuant to Section 7 of the StGB. Under Section 2, paragraph 2 of the CSA, corporate criminal liability would extend to offenses committed by a corporation, even if German law does not apply, when the following cumulative requirements are met: (i) the offense would constitute a crime under German law; (ii) the offense is considered a criminal offense in the country where it was committed; and (iii) the corporation had a registered office in Germany at the time the offense was committed. Although German law prohibits double jeopardy pursuant to Article 103 of the German Constitution ("*Grundgesetz*"), this prohibition does not apply to all countries nor to administrative fines. Corporations that face fines or sanctions abroad can be fined by German authorities for the same conduct. Still, German authorities usually consider the fact that the corporation already incurred fines or sanctions in another country when determining the amount of the fines or disgorgement to impose. However, this is solely based on common practice; presently, there is no legal provision requiring such crediting. In that regard, Section 38 of the CSA stipulates that, under certain circumstances, the authorities may refrain from prosecuting a corporation if it is expected that the corporation will be sanctioned abroad for the same corporate crime. Moreover, Section 15, paragraph 3 of the CSA stipulates that the court will weigh all the circumstances in favor and against the corporation when determining the fine, providing courts a legal basis for crediting fines and sanctions incurred abroad.
Can a parent company be criminally liable for the acts of a subsidiary?	Presently, the German Federal Court of Justice has not ruled on this specific issue. However, the Higher Regional Court of Munich argued in a September 23, 2014 decision that the obligation to take necessary and appropriate supervisory measures may extend to subsidiaries if the management of the parent company has the authority and power to influence the subsidiary. The question of whether and to what extent a parent company can be held liable for criminal acts of its subsidiary is still unclear.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. Generally, self-reporting is not required by German criminal law, although certain laws, such as tax laws, do require self-reporting. As described below, however, self-reporting is incentivized.

Is credit offered for self-reporting, cooperation, or remediation?	Yes. However, there is no explicit provision under German law that establishes mandatory credit for self-reporting, cooperation, or remediation in relation to corporate crimes. Nonetheless, based on common practice, voluntary self-disclosure of (possible) corporate crimes, cooperation during official investigations, or remediation efforts by the corporation can be positively considered by the authorities when imposing fines. When opting to cooperate, corporations are generally expected to cooperate in a proactive and comprehensive manner. Consequently, corporations may be required to share results and findings of internal investigations or provide sources of information, documents, or other possible evidence. In that regard, the FCO offers leniency programs for corporations that voluntarily report their involvement with cartels or anticompetitive agreements. Leniency can include a reduction of fines of up to 100%. Moreover, the BaFin's guidelines on regulatory fines for breaches of the WpHG expressly provide provisions under which self-reporting and cooperation are mitigating factors when determining potential fines. The practice, however, varies and is handled by authorities on a case-by-case basis. In most cases, self-reporting, cooperation, or remediation are considered favorably and can lead to a reduction of potential fines. The explanatory memorandum to the CSA expressly addresses this issue and states: "There are no specific and comprehensible rules for the determination of corporate fines, nor are there legally binding incentives for corporations to invest in compliance." Consequently, Section 15, paragraph 3 of the CSA stipulates that the court will weigh all the circumstances in favor and against the corporation when determining the fine. Section 15, paragraph 3 of the CSA further lists examples of cooperation which can be considered, inter alia, the efforts of the corporation to investigate and disclose the corporate crime and to remedy the damage. In addition, Sections 17 and 18 of the CSA provide that fines ought to be reduced by up to 50% when the corporation significantly contributed to and cooperated with the official investigation of the corporate crime.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes. However, the existence of a compliance program is not sufficient, in and of itself, to justify not charging a corporation with criminal or administrative misconduct. Nonetheless, an adequate compliance program may preclude the assumption that supervisory duties were violated pursuant to Section 130 of the OWiG. Therefore, an adequate compliance program may help defend against the allegation that supervisory duties were violated. Since a violation of Section 130 of the OWiG is the reason most often used by prosecutors to impose a fine on corporations pursuant to Section 30 of the OWiG, the implementation of an adequate compliance program can considerably minimize the risk of the corporation being fined. Presently, there is no law that would expressly require prosecutors to take compliance programs into account when determining the fine. Thus, it is up to the discretion of the prosecuting authority if and to what extent a compliance program may be considered for the determination of a fine. In the same way that an adequate compliance program may preclude the assumption of a violation of supervisory duties pursuant to Section 130 of the OWiG, it may also preclude the assumption of corporate criminal liability pursuant to Section 3, paragraph 1 of the CSA.

	That said, the nature of some offenses—e.g., crimes under the StGB—require law enforcement agencies to prosecute notwithstanding the existence of a compliance program.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. Failure to implement a compliance program is not an independent offense. As noted above, however, the absence and state of a company's compliance program can be either a mitigating or an aggravating factor in the prosecutor's decision on how to fine a corporation.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes, but the cooperation between German law enforcement agencies and other foreign government authorities generally depends on the existence of bilateral agreements. Other than that, the Member States of the European Union jointly coordinate their law enforcement agencies through organizations of the European Union, e.g., Europol and Eurojust. In any case, German law enforcement agencies tend to informally contact foreign government authorities to notify them about possible criminal misconduct.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	Presently, there is no key guidance on prosecuting corporations. This may change once the CSA has been introduced.
Does the government incentivize corporations to identify individuals?	No. The German government does not expressly incentivize corporations to identify individuals. Nonetheless, as stated above, cooperation with public prosecutors or other authorities may help mitigate possible fines based on common practice. As part of comprehensive cooperation, a corporation usually needs to identify all individuals substantially involved in or responsible for the misconduct at issue, regardless of their position, status, or seniority, and provide to the authorities all relevant facts relating to that misconduct. Sections 17 and 18 of the CSA, however, stipulate that fines should be reduced by up to 50% when the corporation significantly contributed to and cooperated with the official investigation of the corporate crime. As part of such cooperation and contribution, the corporation may conduct its own internal investigation or retain a third party to do so, which may lead to individuals being identified.
Does the government have a whistleblower program to incentivize whistleblowers?	No. Germany does not have a program to incentivize whistleblowers. Moreover, the protection of whistleblowers in Germany is fragmented as there is no law that provides specific protection for whistleblowers. Instead, there are only discrete provisions in the Data Protection Law, Labor Law, and the Law on the Protection of Business Secrets ("GeschGehG") that provide protection for whistleblowers.

	For instance, pursuant to Section 5, no. 2 of the GeschGehG, the disclosure of business or trade secrets is not prohibited, and therefore not sanctioned, if the information disclosed is of legitimate interest, for the purpose of detecting unlawful conduct or other misconduct, and if the disclosure is likely to protect the general public interest. Further, the Labor Law allows dismissals or other sanctions for disclosing confidential information to the public or authorities only under narrow circumstances. According to case law (see the decision of the German Supreme Court, dated July 2, 2001 – 1 BvR 2049/00), the fact that an employee discloses information in order to comply with legal obligations cannot be considered an adequate reason for an instant dismissal. However, immediate dismissal can be justified if the employee discloses information to authorities or the public before disclosing it internally. Such internal disclosure may not be needed in particular cases, for example if the employee would have faced charges if he or she had not reported the misconduct. Moreover, the European Union adopted a directive "on the protection of persons reporting on breaches of Union Law"—the so-called "Whistleblower Directive"— in October 2019. The directive is supposed to establish a Europe-wide minimum standard of protection for whistleblowers. The Member States of the European Union must now decide how to implement these standards into national law.
Last Updated	November 30, 2020

ITALY

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	The legal framework of corporate criminal liability in Italy is provided for by a single decree, Law 231, adopted in 2001. Under Law 231, corporate criminal liability is formally labeled as administrative, although the provisions at hand are enforced by criminal prosecuting authorities, cover criminal offenses, apply the rules of criminal procedures, result in criminal proceedings, and may lead to severe penalties and precautionary measures. Such "administrative" (or "quasi-criminal") liability applies to legal entities—i.e., to a broad class of collective bodies (including limited liability companies). The rationale behind the general framework set forth by Law 231 is comparable to a corporate negligence model, whose judicial assessment may be triggered by objective preconditions (a criminal offense committed by a relevant individual, in connection with the company business). As a result, an entity shall not be held directly liable for a proper criminal offense; instead, companies face quasi-criminal liability for their negligence in reducing the risk of criminal offenses potentially committed in their interest or for their benefit. Such rationale leads to an ex ante perspective judgment.
In what circumstances can a corporation be held criminally liable?	Under Law 231, the entity's (quasi-)criminal liability is triggered by (or rather presupposes) a criminal offense, but it does not end there. The entity's administrative offense basically consists of the following joint elements: (i) a criminal offense committed or attempted, (ii) by an individual belonging to a class of persons with operational authority (executives or subordinates), (iii) in the entity's interest or to its benefit, (iv) provided that corporate negligence exists at the time of perpetration—i.e., the entity has not previously adopted and implemented a proper compliance program aimed at substantially reducing the risk of that type of criminal offense and/or has not appointed an independent supervisory body with proper and effective powers. The entity's (quasi-)criminal liability may arise in connection with a limited number of criminal offenses, which are largely provided for in Law 231, including, but not limited to: • Corruption-related crimes (e.g., bribery, extortion); • Conspiracy and organized crime, including cross-border criminal offenses; • Terrorism and related crimes; • Counterfeiting of currency and related crimes; • Crimes against industry and trade (e.g., unlawful competition); • Fraud to the detriment of the State/European Union; • IT crimes;

	• Market abuse offenses (i.e., market manipulation and insider trading); • Crimes related to safety at the workplace; • Labor law-related crimes; • Money laundering-related crimes; • Corporate crimes; • Tax criminal offenses; and • Environmental crimes. The criminal offenses subject to corporate criminal liability under Law 231 continue to expand. Most recently, on July 30, 2020, a new set of criminal offenses was added to the list following Italy's implementation of the "PIF Directive," an EU Directive aimed at using criminal law to protect the European Union's financial interests. The new offenses include VAT tax crimes (and attempts of serious VAT tax crimes), fraud in public supplies, fraud in agriculture and smuggling, misappropriation of EU funds, and abuse of office to the detriment of EU financial interests.
Is there individual liability for corporate criminal offenses?	Yes. The perpetrator is liable for the criminal offense that may also trigger the entity's (quasi-)criminal liability, if the further conditions required under Law 231 are met. Joint criminal proceedings are brought against the company and the individual offender(s). Companies can still be held liable even when the individual offender has not been identified or prosecuted. Furthermore, some Italian courts have ruled that directors can be held individually liable for failing to adopt a compliance program pursuant to Law 231. Specifically, the Court of Milan allowed a company to take action against its managing director to refund economic damages that the company suffered following a Law 231 sanction for crimes committed by its top managers in the absence of a compliance program.
What are the primary criminal government enforcement agencies?	Public prosecutors are tasked with investigating and prosecuting corporate misconduct. Under the Italian legal system, public prosecutors and judges together constitute the judiciary—an independent, self-governing body. While prosecutors conduct investigations only with the assistance of police forces, they may initiate an investigation based on information they receive from other enforcement agencies, such as the National Commission for the Companies and the Stock Exchange ("Consob") or Tax Authorities. A number of regulators also have administrative enforcement power: • **Consob**: regulates the financial market, has extensive investigative power and authority to impose significant fines; • **Antitrust Authority**: has extensive investigative power and authority to impose significant fines; and • **Tax Authorities**: have extensive investigative power and authority to impose significant fines. The National Anti-Corruption Authority ("ANAC") also has investigative powers and is tasked with supervision of public procurement.

FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Law 231 provides for the following penalties vis-à-vis the entity: • Pecuniary fine: up to a maximum amount of €1,549,000.00, or up to three times the amount under certain circumstances (e.g., multiple offenses); • Disqualification: up to a maximum of two years (with some significant exceptions); it can include a prohibition against continuing the company's activity; suspension or revocation of authorizations; a prohibition against negotiating with Public Bodies and Governmental Agencies; disqualification from loans, credit facilities, and subsidies, or revocation of those already obtained; and a prohibition against advertising products or services; • Permanent disqualification: under special circumstances, certain prohibitions may be imposed permanently, including requiring the company to wind up; • Forfeiture of the crime proceeds/price, without any predetermined quantitative limit; and • Publication of the conviction judgment in newspapers. Notable features of these penalties include: • Pecuniary fines always apply, while disqualification sanctions apply only in connection with those offenses for which they are specifically provided under Law 231, subject to certain requirements. • Publication of the conviction judgment in newspapers applies only in those cases where disqualification is also imposed. • Forfeiture of the crime proceeds always applies, even if the entity is not held liable due to the existence of a proper compliance program prior to the crime's perpetration. • Seizure (both as a penalty and as a precautionary measure) can be ordered on the assets directly resulting from the criminal behavior as well as on other company assets, up to the equivalent amount; however, seizure cannot be imposed on the amounts that may be returned to the damaged parties. • Special provisions apply in the case of multiple offenses perpetrated within a single factual context. Law 231 also provides for precautionary measures. Subject to certain conditions, seizure of the crime proceeds/price and disqualification sanctions may be ordered by the judge at any time during the criminal proceedings (including during the investigation phase) before (and irrespective of) a final conviction.
What are the available forms of a criminal resolution?	Plea agreements are available to the entity if the entity is charged with an offense carrying a pecuniary fine only, or if a plea agreement is also available to the perpetrator under the relevant rules set forth in the Italian Penal Code and in the Italian Code of Criminal Procedure.

	A plea agreement entered into between the defendant and the prosecutor must be ratified by the court. In practice, however, if the relevant offense carries disqualification sanctions (see above), entering into a plea bargain with the prosecutor and having it ratified by the court might be challenging, especially in relation to the most serious (quasi-)criminal offenses outlined in Law 231. This is also true in those cases where the court's assessment may lead to a permanent disqualification. DPAs and NPAs are not available in Italy.
What are the potential collateral consequences of a corporate criminal conviction?	As discussed above, Law 231 provides for a number of disqualification sanctions, including suspension or revocation of authorizations, disqualification from public contracts, and temporary prohibitions against engaging in business. Further, any record under Law 231 (including a plea bargain judgment) or even a charge may carry significant consequences under the Italian law on public contracts. Additional downsides may arise indirectly under the law of contracts with reference to the legal relationships with private parties, if their compliance program or code of ethics set forth limitations or other consequences vis-à-vis convicted companies.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. For companies headquartered in Italy, Law 231 applies to crimes committed in Italy and abroad. In addition, the Italian Supreme Court recently upheld lower court decisions holding that foreign companies can also be held liable under Law 231 if the crime was (even partially) committed within the Italian territory or gave rise to consequences in Italy.
Can a parent company be criminally liable for the acts of a subsidiary?	Law 231 does not specify, but it provides for general rules that lead to a positive answer subject to certain conditions. Parent company liability may arise in connection with a criminal offense committed in the subsidiary's interest or to its advantage, provided that: (i) the relevant individual perpetrates such criminal offense in his or her double capacity as an executive or (less likely) subordinate of both companies (including the parent company), or alternatively, the parent company's executive/subordinate takes part in the relevant criminal behavior carried out by the subsidiary's executive/subordinate; and (ii) the same criminal offense is also committed in the parent company's interest or to its advantage. While Italian case law acknowledges the possible existence of parent companies' (quasi-)criminal liability for the acts of subsidiaries under Law 231, such recognition does not negate the above principles and consequently rules out the possibility that mere group membership and any indirect interests thereto might play an exhaustive role.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No.

Is credit offered for self-reporting, cooperation, or remediation?	Possibly. There are no official programs offering credit for self-reporting. Moreover, because NPAs are not available under the Italian criminal system, self-reporting does not prevent the judiciary from ruling on the entity's (quasi-)criminal liability. That said, early cooperation during investigations, together with a remedial approach, may have a mitigating effect both with reference to the penalties imposed and to the likelihood of precautionary measures (including disqualifications). Under Law 231, applicable fines can be reduced by up to two-thirds and disqualifications can be excluded if the following conditions are fulfilled before the opening of the trial of first instance is declared: • The company has entirely compensated for the damage and has eliminated the damaging consequences of the crime, or has taken effective actions in that respect; • The company has eliminated the organizational deficiencies that generated the crime (by adopting and implementing an adequate compliance program) and is able to prevent its reoccurrence; and • The company has made the profits obtained from the crime available to the authorities for confiscation.

Is the implementation of a corporate compliance program a defense to criminal liability?	Yes, provided that the corporate compliance program was implemented before the criminal offense occurred. Such a defense refers to the corporate negligence constituent element. It is worth pointing out that corporate negligence may be at stake where the relevant criminal offense and the company's interest/advantage elements both exist in the background. In such a scenario, different organizational standards are required (and different rules of evidence are provided), depending on whether the criminal offense has been perpetrated by an executive or a subordinate. In either case, the effective implementation of a proper compliance program before the crime occurs is crucial, as well as the appointment of an independent supervisory body in charge of monitoring the program's enforcement.
	
	From a law-in-the-facts standpoint, when it comes to the judicial assessment of corporate negligence, hindsight bias may be an issue.
	
	The higher organizational standard required under Law 231 is the one set forth in connection with executives' misbehavior. In such cases, the burden of proof is on the defendant, and the company is required to demonstrate that:
	• Before the relevant violations were committed:
	  • Compliance programs were adopted; and
	  • An independent supervisory body was put in charge with broad power specifically designed to monitor the effectiveness of the compliance program in force;
	• Such compliance program has been fraudulently circumvented by the perpetrator; and
	• The supervisory body in charge did not fail to exercise a proper control on the relevant business process.

	Law 231 also outlines specific features for effective compliance programs in this scenario, which include: (i) identifying those activities within the company business that might give rise to the relevant criminal offenses; (ii) adopting procedures aimed at planning the relevant decision-making processes and the implementation thereto; (iii) identifying operating methods for the management of financial resources that are suitable to prevent the perpetration of relevant criminal offenses; (iv) providing for a system of information flow to the supervisory body on a compulsory basis; (v) providing for an effective penalty system; and (vi) providing for whistleblowing protocols, properly designed to protect the whistleblower. By contrast, if the relevant criminal offense was carried out by a subordinate, a lower (albeit not immaterial) standard is required for defense purposes. Among other differences, where the perpetrator is a subordinate, the burden of proof is on the prosecution to prove negligence, and the compliance program may be deemed effective regardless of whether the perpetrator fraudulently evaded the protocols in force. This is an important difference, considering that the latter element is typically interpreted as an extremely high standard, where the company is in fact required to provide evidence that its otherwise well-designed internal control system was circumvented through intentional and fraudulent behaviors specifically conceived to neutralize the monitoring protocols in place.
Is failure to implement a corporate compliance program a basis for criminal liability?	No, the fact that a company does not have a corporate compliance program is not itself a basis for (quasi-)criminal liability. However, a company will face such liability pursuant to Law 231 if a relevant individual perpetrates a relevant criminal offense and the entity has not previously implemented an appropriate corporate compliance program.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Italy has ratified a number of international conventions aimed at cooperation against corruption: • The 1997 OECD Convention; • The 1999 Criminal Law Convention on Corruption (Treaty 173 of the Council of Europe); and • The 2003 United Nations Convention against Corruption. Today, Italy actively participates with the OECD Working Group on Bribery and with the Council of Europe's Group of States against Corruption.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	In addition to the general guidance regarding compliance plan requirements in Article 6 of Law 231, the law directs companies to adopt guidelines and models supplied by their respective trade associations that have been approved by the Italian Ministry of Justice. For instance, the National Confederation of Italian Industry ("Confindustria") has published such guidelines. While these guidelines are helpful starting points, companies must nevertheless ensure their compliance plans are tailored to their individual needs.
Does the government incentivize corporations to identify individuals?	Generally, no. However, new provisions aimed at combatting public sector corruption have incorporated incentives to identify individuals for public corruption-related crimes in the most recent amendments to Law 231.
Does the government have a whistleblower program to incentivize whistleblowers?	Italian law was recently amended to provide whistleblowers with protection from retaliation, but there are currently no incentives or rewards to encourage reporting. Whistleblowers can submit reports to ANAC, which can launch administrative penalty proceedings or transfer cases to other authorities such as the Public Prosecutor's Office or the Court of Auditors.
Last Updated	November 18, 2020

NETHERLANDS

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Under Article 51 of the Dutch Criminal Code ("*Wetboek van Strafrecht*" or "DCC"), any "natural" or "legal persons" can be held criminally liable. A legal person includes a corporation. A legal person can in principle be criminally liable for any conduct that a natural person could be convicted of, so long as there can be "reasonable attribution" of that conduct to the legal person. According to case law, whether an alleged criminal offense can reasonably be attributed to a legal person depends on the specific circumstances of the case at hand, including the nature of the criminal conduct. Attribution will typically be possible if the criminal conduct took place within the "sphere" ("*sfeer*") of the legal person. A number of (nonexhaustive and noncumulative) points of reference have been developed in case law to assess whether certain conduct took place within the legal person's sphere, including: • The act or omission is committed by someone who works for the benefit of the legal person, either as an employee or otherwise; • The act or omission fits within the normal business operations of the legal person; • The legal person benefited from the conduct; or • The legal person had the power to decide whether the conduct would or would not take place, and that or similar conduct was in fact, or was in the past, accepted by the legal person. The acceptance of the conduct includes the legal person's failure to take reasonable care to prevent the conduct from occurring.
In what circumstances can a corporation be held criminally liable?	Although it is feasible that a corporation in the Netherlands could be liable for any crime, corporate criminal liability usually involves: • Securities fraud; • Accounting fraud; • Bribery; • Criminal anticompetition; • Various tax crimes; • Environmental crimes; • Money laundering; and • Cybersecurity and data protection-related crimes.
Is there individual liability for corporate criminal offenses?	Yes. Under Article 51 of the DCC, if an offense is committed by a legal person, then criminal proceedings may be instituted against: (i) the legal person; (ii) those who ordered the commission of the offense or effectively directed ("*feitelijk leidinggeven*") the unlawful conduct; or (iii) the legal person and those who ordered the commission of the offense or effectively directed the unlawful conduct.

	Dutch criminal law does not necessarily follow a legal person's governance structure to determine which individuals within a legal person can be held criminally liable. Leaving aside the concept of ordering the commission of the offense, anyone who, briefly put, has the authority and factual power to prevent a criminal offense within a legal person and does not act (see further below) can be considered a de facto director ("*feitelijk leidinggever*") and can be held criminally liable. Depending on the facts of the matter, this can in theory be anyone from the CEO to a low-ranking employee, although higher-ranking managers, officers, (executive and nonexecutive) directors, and board members are typically more likely to be exposed to criminal liability. In this respect, two cumulative conditions should be met. Pursuant to case law, a natural person can be considered a *de facto* director if she or he: 1. Has, while being authorized and reasonably obliged to take measures to prevent the prohibited conduct from taking place, failed to do so; and 2. Has willingly and knowingly accepted the reasonable chance that the prohibited conduct would happen. Although those in charge of a legal person will be more exposed, the above does not mean that they are subject to automatic criminal liability. Some degree of intent to commit a criminal offense (negligence does not suffice), or an intentional omission to prevent it from happening, is necessary.
What are the primary criminal government enforcement agencies?	The Dutch Public Prosecution Service ("*Openbaar Ministerie*" or "DPPS") is the sole governmental body that can prosecute criminal cases. The public prosecutor partners with various investigative agencies (such as the National Unit, composed of the National Crime Squad, National Police Intelligence Service, Special Investigative Services, Royal and Diplomatic Security Service, and Counterterrorism) to bring criminal cases. A subdivision of the DPPS is the Functional Public Prosecutor's Office ("*Functioneel Parket*," comparable to the UK Serious Fraud Office), which specializes in economic and environmental crimes.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Corporations face financial penalties as a consequence of criminal conviction. Under Article 23 of the DCC, each offense contains an associated category (1–6), which corresponds to a maximum fine level. The DCC provides for six categories of fines, and each offense in the DCC specifies the category associated with the crime. The categories then limit the fine that can be imposed. As of the date of this publication, the categories are as follows: (i) Category One, €435; (ii) Category Two, €4,350; (iii) Category Three, €8,700; (iv) Category Four, €21,750; (v) Category Five, €87,000; and (vi) Category Six, €870,000. The categories are modified every two years.

	For legal persons, if the relevant category does not adequately fit the extent of the crime, the next highest category can be used for sentencing. If a fine of the sixth category can be imposed for the offense and if this amount is not deemed appropriate, a fine of up to 10% of the annual turnover of the preceding fiscal year may be imposed. The public prosecutor generally will consider offender-specific circumstances and the fines in past cases to determine the appropriate financial sanction.
What are the available forms of a criminal resolution?	Dutch law does not specifically recognize plea agreements, DPAs, or NPAs. Notwithstanding, public prosecutors currently have significant latitude and authority to negotiate and ultimately settle a case, similar in effect to these types of resolutions, prior to criminal prosecution (so-called "transactions"). Public prosecutors may also decline prosecution altogether for reasons of public interest.
What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences of a criminal conviction include: • Forfeiture of assets; • Revocation of certain rights; • Public disclosure of the sentence; • Suspension of economic activities; and • Restraint of the enterprise. Because public prosecutors are given significant authority over settlements, the imposition of collateral consequences varies depending on the severity of the charged crimes and individual circumstances.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Generally, a legal person established in the Netherlands is liable for offenses committed abroad, if these offenses qualify as a crime ("*misdrijf*," as opposed to misdemeanors ("*overtredingen*")) and the crime is punishable in the place where it was committed, pursuant to Article 7 of the DCC. As it applies to all legal persons, for certain enumerated crimes, Dutch law applies to any legal person who commits an offense outside the territorial limits of the Netherlands, if the offense is committed against a Dutch national or Dutch civil servant and the crime is punishable in the place where it was committed. Articles 2–7 of the DCC provide an exhaustive list regarding jurisdiction as it relates to crimes committed in the Netherlands, in foreign territories, by Dutch nationals, and by foreign persons. In many cases, jurisdiction is offense-specific. However, generally, all natural and legal persons in the Netherlands must abide by Dutch law. Further, Article 4 of the DCC lists specific instances in which any natural or legal person can be liable for crimes committed outside of the country so long as there is a connection to the Netherlands.

Can a parent company be criminally liable for the acts of a subsidiary?	Yes. However, although there is consensus that a parent company can be held liable for acts of a subsidiary, there is less consensus as to the legal theory on which such liability should be based. The primary basis for imputing criminal liability to the parent company seems to be the "reasonable attribution" of the subsidiary's conduct to the parent company. Attribution will typically be possible if the criminal conduct took place within the "sphere" of the parent company. It is more likely that the behavior of an employee of a subsidiary will be attributed to the parent company if the subsidiary in question has little autonomy. The more a subsidiary operates autonomously, the more difficult it is to attribute the acts of its employees to the parent company. Criminal liability may also be imputed to the parent company if the parent company effectively directed ("*feitelijk leidinggeven*") the unlawful conduct of the subsidiary. For prosecution on this basis, it must first be established that the subsidiary has committed a criminal offense, but it is not required that the subsidiary is, or will also be, prosecuted for the offense. Criminal liability may also be imputed to the parent company where the parent company causes its subsidiary to commit an offense.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. Although not a constitutional right, Dutch law provides natural and legal persons with the right against self-incrimination. Therefore, self-reporting of a corporate criminal act is not required, but it may be incentivized (see below).
Is credit offered for self-reporting, cooperation, or remediation?	These are discretionary elements to be weighed by the DPPS. On September 4, 2020, a new Instruction for the DPPS on Large Settlements ("*Aanwijzing hoge transacties*" or "Instruction") entered into force, setting a framework and the appropriate procedure for offering large settlements to defendants. The Instruction replaces the 2008 Instruction on Large and Extraordinary Settlements. On several elements, it is brought closer in line with the DPPS's existing practice of handling large settlements. The Instruction lists several nonexhaustive elements to be considered when determining a company's eligibility for a settlement and the settlement amount, including: • Acknowledgement of the facts by the company (the Instruction explicitly mentions that this does not include any admission of guilt); • Compliance measures (to be) taken by the company to prevent further violations; • Whether the company self-reported the conduct and cooperated with the criminal investigation; and • Whether the criminal investigation is connected to foreign investigations, and the potential for a joint settlement.

	Although self-reporting, cooperation, and remediation are explicitly addressed in the Instruction and self-reporting and (seemingly) cooperation is also mentioned in passing in the DPPS's Instruction on the investigation and prosecution of foreign corruption, there is no official guidance (yet) setting out if, and to what extent, credit is provided for these mitigating circumstances. It therefore remains unclear to what extent any of these factors contribute to the DPPS's decisions in a specific matter. The court may take the above-mentioned or similar circumstances into account at sentencing.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. The existence of a compliance program is not sufficient, in and of itself, to justify not charging a corporation for criminal misconduct. However, a company could escape liability if it has established effective internal controls, ethics, and compliance rules and if it did everything in its power to prevent the act. The existence of adequate supervision and control measures is often important to determine whether the offense was part of the normal business activities of the legal person and whether the corporation accepted the commission of the offense. Whether a corporation has taken adequate due care will be assessed based upon statutory obligations, requirements emanating from contractual obligations, customary professional standards, and other self-regulatory measures. Therefore, since the public prosecutor can decline to bring criminal charges against a legal person for public policy reasons, a robust compliance program may provide for exculpation. And even if exculpation is inappropriate, the public prosecutor or judge can consider the existence of a compliance program when determining the penalty imposed.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. Failure to implement a compliance program is not an independent offense. However, as explained above, the presence of a company's compliance program may feature prominently in the public prosecutor's decisions whether and how to charge a corporation with criminal conduct. Moreover, although compliance programs are not required, the Dutch government encourages companies to create and implement compliance programs in more specific situations, such as in the field of economic sanctions and export controls.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. The Netherlands cooperates significantly with foreign governments to prosecute cross-border corporate criminal matters. In addition, the extraterritorial reach of foreign laws such as the U.S. FCPA, the UK Bribery Act, and more recently, Sapin II in France, has contributed to a marked increase in cross-border cooperation by the DPPS. The Netherlands is also part of significant cooperative treaties, such as the Rome Statute of the International Criminal Court.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The decision whether to prosecute a corporation is entirely a matter for the DPPS. Generally, there is no official guidance or disclosed criteria for the public prosecutor's decision to prosecute a corporation. The DPPS has published various policy rules on the investigation and/or prosecution of violations in relation to specific laws. For corporations, the most relevant are the policy rules on domestic and foreign corruption, labor laws, trading hour laws, and environmental laws (which violations can under certain circumstances qualify as a criminal offense). In offering settlements, public prosecutors currently have significant authority. As explained above, on September 4, 2020, the new Instruction entered into force, setting a framework and the appropriate procedure for offering large settlements to defendants. Compared to its previous version, apart from the implementation of an independent review of large settlements, the Instruction has been amended and clarified on a number of other topics, which in essence brings it more in line with the DPPS's existing practice of handling large settlements. The main features of the Instruction are summarized below. **Scope and Effect**: The term "large settlement" has been further delineated and, briefly put, includes all settlements that involve a penalty amount of at least €200,000 and settlements involving a total amount of €1,000,000 or more (including, inter alia, disgorgements). The Instruction notes that in practice, large settlements occur only in relation to legal entities, and that, for a variety of reasons, a large settlement can ultimately have more effect (on society, the suspect, and the injured parties) than criminal prosecution. **Important Principles**: The Instruction recognizes that offering a large settlement requires a tailor-made approach based on various individual circumstances. The Instruction lists several nonexhaustive elements to be taken into account when determining a company's eligibility for a settlement and the settlement amount, including: • Acknowledgement of the facts by the company (the Instruction explicitly mentions that this does not include any admission of guilt); • Compliance measures (to be) taken by the company to prevent further violations; • Whether the company self-reported the conduct and cooperated with the criminal investigation; and • Whether the criminal investigation is connected to foreign investigations, and the potential for a joint settlement. In determining the amount of the settlement, elements taken into account include: • The "ability-to-pay" principle (Article 24 of the Dutch Criminal Code); • Whether the suspect "self-reported" the offenses or not; • The extent to which the suspect has cooperated with the investigation; • Whether an arrangement was made with the victims; • Penalties imposed by courts and settlements reached in similar cases; and • Whether penalties were imposed by foreign authorities.

	In addition, the Instruction stresses that the basic principle remains that the responsible individuals should also be prosecuted "if possible." To observe compliance by the suspect with the settlement agreement, the DPPS can, where relevant, be assisted by external supervisors, such as the Dutch financial market regulators or the Dutch Data Protection Authority. The settlement agreement can also include specific internal supervisory measures, such as the obligation for the suspect to set up a monitor. In addition, a legal entity can be instructed to regularly report to the Supervisory Board. **Review Committee**: The Instruction introduces an independent review committee, consisting of a former lawyer, a former judge, a professor of criminal law, and former public prosecutors. The Review Committee assesses whether the proposed settlement is reasonably appropriate and advises the DPPS's Board accordingly. The Review Committee also hears the Chief Public Prosecutor and the company prior to issuing its advice. In the event the Review Committee issues positive advice, the DPPS's Board will decide whether or not to offer the proposed settlement. In the case of negative advice, the case is referred back to the Chief Public Prosecutor, who would then take a new prosecution decision. The Review Committee's advice therefore plays a key role in deciding whether a settlement will be reached. **Press Release**: After a large settlement is reached, the DPPS in principle publishes a press release to provide public accountability on how it has handled the settlement of the case. The press release contains (at least) the amount of the settlement and an extensive factual report. This factual report addresses, among other things, the events that led to the offense, the investigation findings, and the role of the suspect. **Judicial Review Bill Expected**: The Instruction is introduced in times of growing public and political concern regarding large settlements with companies in the Netherlands. Over the past few years, the DPPS has entered into a number of large-ticket settlements with prominent Dutch companies. Critics have argued that companies "buy off prosecution" and "get away" with improper conduct, and there are public claims of a lack of transparency. The DPPS has tried to address the asserted lack of transparency by issuing more elaborate and detailed press releases. However, there is also a broader call for the introduction of a form of court scrutiny of large settlements. In response to this, the Dutch government is developing a bill that provides for a form of judicial review of such settlements. The introduction of the Review Committee in the Instruction is to be regarded as an interim measure pending the Judicial Review Bill.
Does the government incentivize corporations to identify individuals?	Yes. Although there is no official requirement or incentive to identify individuals associated with wrongdoing, because the DPPS and judge take into consideration all aspects of a corporation's cooperation, disclosure of individual wrongdoers may count positively toward the assessment of the resolution or penalty.

Does the government have a whistleblower program to incentivize whistleblowers?	Yes, there is legislation covering whistleblowing, but the Netherlands has not enacted any form of bounty system in relation to whistleblowers. The Netherlands passed the Whistleblowers Authority Act in 2016, which requires corporations to create internal procedures for reporting wrongdoing and which prohibits retaliation for reporting. The Act also established the Dutch Whistleblowers Authority, which is a confidential service provided by the government to carry out investigations. Importantly, a whistleblower must first attempt to internally disclose the wrongdoing before disclosing it to government institutions, unless such attempt would be futile.
Last Updated	November 19, 2020

RUSSIA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	No. Russia is a civil law country, and the criminal code defines "criminal liability" as only occurring for a sane natural person. However, corporate entities may be liable for Administrative Code Offenses that encompass similar conduct, like larceny, and carry similar sanctions, not including imprisonment.
On what principles or legislation is corporate criminal liability based?	Not applicable.
In what circumstances can a corporation be held criminally liable?	Not applicable.
Is there individual liability for corporate criminal offenses?	Company officers may be held criminally liable in connection with the company's activity. For example, such criminal liability may be imposed for the company's violations of environmental legislation and transport-related regulations, among others. A company's executive officers (i.e., general director, chief financial officer) may be held criminally liable for the company's tax evasion, failure to pay staff salaries, or fraudulent actions in anticipation of a company's bankruptcy. Company officers and directors may also be subject to individual liability for Administrative Code Offenses.
What are the primary criminal government enforcement agencies?	All federal law enforcement agencies in Russia are empowered to investigate and try offenses. For instance, the General Prosecutor's Office is responsible for prosecuting crimes in court and may also begin criminal investigations. The Investigative Committee of the Russian Federation is responsible for investigating crimes and reports to the President of the Russian Federation (rather than to the General Prosecutor's Office). The Ministry of Internal Affairs is the primary federal police force and is responsible for investigating crimes. The Federal Security Service of the Russian Federation is primarily responsible for internal and border security, counterterrorism, and counterintelligence—but will also investigate serious crimes or other federal law violations on occasion.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	There are no criminal sanctions for corporations. That said, for Administrative Code Offenses, penalties may include: • Warnings; • Fines; • Confiscation of the instrument of the offense;

	• Administrative arrest, which carries a maximum detention of 30 days for natural persons; • Disqualification, which prevents natural persons from holding certain positions for six months to three years; or • Administrative suspension of the activity for up to 90 days.
What are the available forms of a criminal resolution?	The Administrative Code does not provide for plea bargains but does provide examples of mitigating factors that, in practice, could aid companies in obtaining cooperation credit and mitigating liability.
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties, and sanctions?"
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Russian citizens or stateless persons permanently residing in Russia may be prosecuted for crimes occurring outside of Russia, unless a foreign court has already adjudicated the matter. To illustrate, company officers may be liable in cases where there was embezzlement and money laundering involving asset- or fund-transfers outside of Russia and/or with foreign entities, failure to repatriate foreign currency proceeds by Russian organizations, and underpayment of customs duties. Persons committing an administrative offense outside of Russia are liable only where it is provided for by international treaty.
Can a parent company be criminally liable for the acts of a subsidiary?	Although there is no corporate criminal liability, the Administrative Code language indicates that parent companies are liable for the actions of related companies. This applies to companies that merged into one company, companies that have been adjoined, and companies that were divided from one into several.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. However, in certain cases, not reporting a “grave crime” may lead to criminal liability.
Is credit offered for self-reporting, cooperation, or remediation?	Under the Administrative Code, companies may avoid liability for corporate bribery by self-reporting incidents to the authorities. In addition, as mentioned above, the Administrative Code contains a nonexhaustive list of mitigating factors that, in practice, gives companies credit for cooperating with authorities.

Is the implementation of a corporate compliance program a defense to criminal liability?	No. In addition, Russian law does not provide for an "adequate procedures" defense against Administrative Code violations.
Is failure to implement a corporate compliance program a basis for criminal liability?	Although there is no corporate criminal liability, a company may be guilty of an Administrative Code Offense for omitting or failing to take appropriate preventative measures. For bribery offenses, Article 13.3 of Anti-Corruption Law No. 273 provides a useful guide on anticorruption measures that companies should implement to avoid Administrative Code liability. Moreover, the Ministry of Labor recently issued formal guidance for companies.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Not particularly. The United States and Russia signed a mutual legal assistance treaty in 2002, although Russia is not known to cooperate with U.S. law enforcement. In addition, the United States and Russia do not have an extradition treaty.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	Government agencies do not appear to provide guidance on prosecuting corporations.
Does the government incentivize corporations to identify individuals?	No.
Does the government have a whistleblower program to incentivize whistleblowers?	No, not for the private sector. Russian parliament suspended consideration of a draft federal law that would protect and incentivize whistleblowers. However, Article 9(4) of the Anti-Corruption Law provides some protection to government employees who become whistleblowers. There is also a general reward program run by the Interior Ministry for reporting or assisting with solving crimes.
Last Updated	June 26, 2020

SPAIN

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability has been established under Spain's Criminal Code since 2010. It is based on a *numerus clausus* system, which means that corporate entities can be held criminally liable if, and only if, the Criminal Code expressly establishes it. Under the Criminal Code, where provided for, corporations can be found criminally liable for: 1. Offenses committed in their name and on their behalf, for their direct or indirect benefit, by (a) their legal representatives or (b) those who, acting individually or as members of the corporate body, are authorized to make decisions (i) in the name of the corporation or (ii) by those who hold organizational and management powers within it; and 2. Offenses committed in the pursuit of corporate activities, on their behalf and for their direct or indirect benefit, by those who, being subject to the authority of the persons referenced in the above paragraph, have been able to perform such acts because the persons referenced in the above paragraph seriously breached their duties of supervision, oversight, and control.
In what circumstances can a corporation be held criminally liable?	Currently, the crimes for which corporate entities may be liable under the Criminal Code include, but are not limited to: • Fraud (Articles 248 to 251 bis); • Obstruction of law enforcement (Articles 257 to 258 ter); • Fraudulent insolvency (Articles 259 to 261 bis); • Computer hacking (Articles 263 to 267); • Crimes against intellectual property (Articles 270 to 277); • Crimes related to the market and consumers (Articles 278 to 286); • Corruption in business (Article 286 bis); • Money laundering (Article 301); • Illegal funding of political parties (Article 304 bis); • Tax evasion (Articles 305, 306, and 310 bis); • Crimes related to the Treasury (Social Security) (Articles 307, 307 bis, 307 ter, and 310 bis); • Other offenses related to public administration (Articles 308 and 310 bis); • Environmental offenses (Articles 325 to 331); • Offenses related to collective security (Article 343); • Bribery and corruption (Articles 419 to 427 bis); • Influence peddling (Article 429); and • Corruption in international commercial transactions (Article 445).

Is there individual liability for corporate criminal offenses?	Yes. However, the Spanish Supreme Court held in a 2016 ruling that criminal liability cannot be transferred automatically from individuals to corporate entities and vice versa. As a result, there could be a case where an individual is found guilty of a crime but the corporate entity is not convicted. In general, the criminal liability of a corporate entity is separate from the liability of individuals because the requirements for proving mens rea differ for individuals and corporations.
What are the primary criminal government enforcement agencies?	The primary criminal government enforcement agency is the Spanish Anti-Corruption Prosecutor's Office, which is a special unit of the Spanish Prosecutor's Office that only investigates corruption and organized crime.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Pursuant to the Criminal Code, corporate entities may be punished with a fine in the form of a daily quota (ranging from €30 to €5,000 per day) or based proportionally on the profit obtained. Additionally, as long as the Criminal Code specifically establishes it, a corporation may also be punished with any of the following penalties: • Dissolution; • Suspension of its activities; • Closure of its premises and establishments; • Prohibition against carrying out the activities through which the company committed, favored, or concealed the crime; • Bar against obtaining public subsidies and aids, entering into contracts with the public sector, or enjoying tax or Social Security benefits and incentives; or • Judicial intervention. The suspension of activities, closure of premises and establishments, and judicial intervention can be ordered as a preventive measure during pretrial proceedings.
What are the available forms of a criminal resolution?	Spain does not recognize DPAs and NPAs; the liability of a corporate entity can be established by a criminal court and in a ruling only. That said, the ruling can be issued with or without the acceptance of the accused entity. If the corporate entity accepts the ruling, this means it agrees with the most serious indictment issued by the accusing parties. By contrast, if the corporate entity considers itself not guilty, it may contest the charges and seek acquittal. In either case, the resulting sentence will be established by a criminal court.
What are the potential collateral consequences of a corporate criminal conviction?	In addition to the potential fines, penalties, and sanctions described above, the Public Procurement Law forbids corporations with criminal records from entering into contracts with the public sector.

EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Any Spanish person (the law does not distinguish between an individual and a corporation) can be held criminally liable for crimes committed outside Spain when three conditions are satisfied: • The act must be punishable in the place where it was committed, unless this requirement is excused by virtue of an international treaty or a legal instrument issued by an international organization to which Spain belongs; • The victim or the Spanish Prosecutor must file a complaint with the Spanish judicial authorities; and • The defendant must not have been acquitted, pardoned, or convicted outside Spain or, in the latter case, must not have served the sentence. This is pursuant to Article 23.2 of the Organic Law of the Judiciary.
Can a parent company be criminally liable for the acts of a subsidiary?	Yes. Parent companies may be liable for the criminal acts of their subsidiary companies as long as the parent was acting as a de facto or legal manager of the subsidiary. Liability may also arise if the crime is related to the consolidated annual accounts.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No.
Is credit offered for self-reporting, cooperation, or remediation?	Yes, credit is offered for self-reporting, cooperation, and remediation, pursuant to Article 31 of the Criminal Code. Specifically, a corporate entity can obtain credit (i.e., a reduced fine or prohibition) by: • Confessing the crime to the authorities before becoming aware that it is being investigated; • Providing new and relevant evidence at any time during the proceedings; • Repairing or diminishing the damage caused before the trial; or • Establishing effective measures, before the trial, to prevent and discover crimes that might be committed in the future within itself. The nature and conditions of the credit awarded will depend on negotiations with the prosecutor on a case-by-case basis.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes, the implementation of a corporate compliance program may exempt the corporation from criminal liability under Article 31 of the Criminal Code. To qualify for an exemption, a corporate compliance program must:

	• Identify the activities in which the offenses that need to be prevented may be committed; • Establish protocols and procedures for the decision-making processes of the corporate entity; • Implement appropriate management models of financial resources in order to prevent offenses; • Impose on the personnel of the corporate entity reporting duties regarding potential risks and infringements; • Establish a disciplinary system that adequately sanctions any kind of wrongdoing; and • Create ordinary and extraordinary (in case of any special event) verification duties.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. Failure to implement a corporate compliance program is not a crime in and of itself; however, judges may consider the corporation's failure to implement a program when determining criminal liability.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. As part of the European Union, Spain cooperates very closely with the rest of the EU Member States. In addition, Spain has signed many international conventions with other countries, including the United States, on judicial cooperation in criminal matters.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The primary government guidance on prosecuting corporations comes from the case law issued by the Supreme Court. Because corporate criminal liability is relatively new in Spain, it is difficult to extract general principles from the case law that currently exists.
Does the government incentivize corporations to identify individuals?	Pursuant to Article 31 of the Criminal Code, corporations that voluntarily identify individuals may be eligible for cooperation credit and a reduced sentence under applicable law.
Does the government have a whistleblower program to incentivize whistleblowers?	No, not yet at a national level—although such legislation appears to be forthcoming. On October 23, 2019, the Directive (EU) 2019/1937 of the European Parliament and the Council on the Protection of Persons Who Report Breaches of Union Law was passed. It establishes common minimum standards to ensure protection for whistleblowers who report wrongdoings committed in certain areas and matters defined therein. This Directive will be enacted into Spanish national law in a term of two years that ends on December 17, 2021, which means that Spain should have a new regulation on whistleblowing soon.

	That said, some autonomous communities (including Catalonia, Castilla y León, Aragón, and Islas Baleares) have already issued regulations protecting whistleblowers and incentivizing them to report wrongdoing within the public sector.
Last Updated	November 11, 2020

SWITZERLAND

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	A corporation may face criminal liability under Article 102 of the Swiss Criminal Code, which defines the preconditions for punishment and specifies the scope of potential fines, penalties, and sanctions.
In what circumstances can a corporation be held criminally liable?	Article 102 of the Swiss Criminal Code imposes two types of corporate criminal liability: • **Subsidiary Liability**: Applies where the offense is committed in the exercise of commercial activities and the offense cannot be attributed to a specific person because of the corporation's inadequate organization. • **Primary Criminal Liability**: Applies to a limited number of significant offenses, including money laundering, bribery of Swiss and foreign public officials, and financing terrorism, where the corporation failed to take reasonable organizational measures to prevent the offense, regardless of whether this offense can be attributed to a specific person. Notably, primary criminal liability requires actual proof that all objective and subjective constitutive elements of an offense committed by at least one individual within the corporation are fulfilled.
Is there individual liability for corporate criminal offenses?	Although Article 102 imposes subsidiary liability when the offense cannot be attributed to a specific person, if a specific person can be identified, both the offender and the corporation can be held liable under a doctrine known as cumulative criminal liability.
What are the primary criminal government enforcement agencies?	Switzerland's primary criminal government enforcement agencies are the Public Prosecutor's Offices in the 26 member states (also known as "cantons") and the Office of the Attorney General of Switzerland.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Corporate criminal sanctions are limited to a fine not exceeding 5 million francs. To determine the amount of the fine, courts consider the seriousness of the offense, the corporation's organizational inadequacies leading to the offense, the loss or damage caused by the offense, and the corporation's economic ability to pay the fine. It has been suggested—but not explicitly held—that Swiss judges may also order *Einziehung*, or the confiscation of the tortious financial benefit; the Swiss Office of the Attorney General recently imposed such forfeiture as a sanction.
What are the available forms of a criminal resolution?	To resolve a corporate criminal action without going to trial, potential resolutions include the Summary Penalty Order Procedure, Accelerated Proceedings, and Reparation.

	• **Summary Penalty Order Procedure**: Akin to a plea bargain in the United States, this resolution allows the prosecutor to avoid ordinary criminal proceedings by offering the accused a deal if two conditions are satisfied. First, the facts must be admitted by the accused or satisfactorily established. Second, the sanction sought by the prosecutor must be limited to a fine or a custodial sentence of no more than six months. The summary penalty order procedure is particularly relevant here because fines are the only available sanction against corporations. • **Accelerated Proceedings**: Like the summary penalty order procedure, this resolution avoids ordinary criminal proceedings if the accused admits the relevant facts and the prosecutor requests a custodial sentence of less than five years. If the prosecutor accepts accelerated proceedings, the prosecutor will discuss the verdict, sentence, and civil compensation with the parties. The prosecutor then drafts an indictment based on the resulting agreement and sends it to a criminal court of first instance, which verifies that the conditions of the accelerated proceedings are met. • **Reparation**: This resolution is available where the offender made reparation for the wrong caused or made every reasonable effort to do so and three additional conditions are satisfied. First, the appropriate sanction must be limited to a fine or a suspended custodial sentence of no more than one year. Second, the general public interest in prosecution must be negligible. Third, the offender must admit to committing the offense. However, it is worth noting that Swiss authorities may be reluctant to apply this type of resolution to cases involving serious cross-border offenses.
What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences of a criminal conviction may include exclusion from tenders or "cross debarment," which permits corporations debarred by one Multilateral Development Bank to be sanctioned for the same misconduct by the other signatory banks. Switzerland has not yet implemented debarment from public contracts as a sanction.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. A crime is deemed committed under Swiss law both at the place where the person concerned commits it and at the place where the crime has taken effect. Thus, to trigger Swiss jurisdiction, it is sufficient that the acts merely have an impact in Switzerland. Companies based in Switzerland are always subject to Swiss jurisdiction, regardless of where the crime was committed.
Can a parent company be criminally liable for the acts of a subsidiary?	No. Criminal liability does not extend beyond the subsidiary where the crime was committed and where there was a failure to take all of the reasonable and necessary organizational measures to prevent the crime from being committed. Swiss courts have carved out some exceptions to this principle, however, including in cases where the financial and decision-making link between the parent company and subsidiary is such that treating them as distinct entities would lead to a result contrary to good faith or would contravene the legitimate interests of third parties.

SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Swiss law does not generally require self-reporting of a corporate criminal act. However, self-reporting is required under Article 9 of the Anti-Money Laundering Act, which mandates that a financial intermediary immediately file a report to the Money Laundering Reporting Office if it knows or has reasonable grounds to suspect that assets involved in the business relationship have a link to corruption or an aggravated tax misdemeanor, are in the hands of a criminal organization, or serve the financing of terrorism. There are related instances where entities and persons outside of the corporation may be required to report a corporate criminal act. For example, the Financial Market Supervisory Authority supervises regulated entities, such as financial institutions. If the Financial Market Supervisory Authority obtains knowledge of corporate and business fraud offenses, it must notify the criminal prosecution authorities. Moreover, any person who, as part of his or her profession, accepts, holds on deposit, or assists in investing or transferring outside assets that he believes originate from a crime or an aggravated tax misdemeanor is entitled to report observations indicating that the assets originate from a felony or an aggravated tax misdemeanor to the Money Laundering Reporting Office in the Federal Office of Police.
Is credit offered for self-reporting, cooperation, or remediation?	Government enforcement agencies may take self-reporting, cooperation, and remediation into account when determining the availability of specific forms of a criminal resolution. For example, reparation may be available where the offender made reparation for the wrong caused or made every reasonable effort to do so.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes, implementation of a corporate compliance program can be a defense to primary criminal liability. Article 102 imposes primary criminal liability on corporations for a limited number of significant offenses, including money laundering, bribery of Swiss and foreign public officials, and financing terrorism. In these instances, a corporation may avoid liability if it has taken reasonable organizational measures to prevent the offense.
Is failure to implement a corporate compliance program a basis for criminal liability?	Failure to implement a corporate compliance program is not a basis for criminal liability in and of itself, but it can indicate a failure to take reasonable organizational measures to prevent the offenses that give rise to primary criminal liability under Article 102.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Swiss authorities are traditionally in favor of granting international assistance. Under its Federal Act on International Mutual Assistance in Criminal Matters, Switzerland may grant mutual assistance to a foreign government's authorities. If Switzerland has not entered into a mutual assistance treaty with the requesting foreign government, then it will grant mutual assistance only if the foreign government also guarantees reciprocity.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	Government agencies do not appear to provide guidance on prosecuting corporations.
Does the government incentivize corporations to identify individuals?	The government does not formally incentivize corporations to identify individuals. However, in criminal proceedings, government enforcement agencies may take into account self-reporting, cooperation, or remediation in determining the availability of specific forms of criminal resolution, like reparation (discussed above).
Does the government have a whistleblower program to incentivize whistleblowers?	No. In fact, Swiss law does not offer statutory protection for whistleblowers. To the contrary, whistleblowers who breach confidentiality and privilege obligations in revealing wrongdoing have been held criminally liable. That said, whistleblowers who were themselves involved in a criminal scheme may be able to negotiate a mitigated sentence via accelerated proceedings on the basis of their cooperation.
Last Updated	November 30, 2020

TURKEY

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	No. Article 20 of the Turkish Criminal Code ("TCC") states that legal entities, including corporations, are not subject to criminal liability. That said, corporations are subject to security precautions as sanctions identified within the scope of the TCC. Thus, within the scope of "security precautions," corporations may be penalized for their employees' conduct in certain situations. For example, corporations are subject to cancellation of commercial licenses and seizure of goods or earnings if their directors or representatives commit a crime in the interest of, or for the advantage of, the legal entity, pursuant to Article 60 of the TCC.
On what principles or legislation is corporate criminal liability based?	See above.
In what circumstances can a corporation be held criminally liable?	See above.
Is there individual liability for corporate criminal offenses?	No, because there are no corporate criminal offenses. In addition, the principle of individual criminal responsibility prevents accusing someone for another person's crimes. Nevertheless, a corporation's directors, managers, or employees will be held personally liable for their own offenses, under Article 20 of the TCC.
What are the primary criminal government enforcement agencies?	Public prosecutors and criminal courts have exclusive jurisdiction over business crimes as well as all remaining crimes regulated under the TCC and other laws. With respect to administrative sanctions, government agencies such as the Financial Crimes Investigation Board, the Public Procurement Authority, the State Supervisory Council, the Competition Authority, and the Capital Markets Board also have extensive authority to investigate businesses and enforce Turkish law. However, concerning criminal actions, these bodies are entitled to bring a complaint only if they locate a crime regulated under certain applicable laws before public prosecution offices and participate in criminal actions to be held before criminal courts.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Within the framework of criminal law, there are three types of sanctions: imprisonment, judicial fines, and security precautions. As explained above, corporations are subject to security precautions among these sanctions only. Corporations are also subject to administrative sanctions. As such, Turkish administrative bodies are entitled to impose administrative sanctions such as administrative fines, tax fines, and prohibitions against participating in public tenders.

What are the available forms of a criminal resolution?	Not applicable.
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties, and sanctions?"
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Although Turkey does not recognize corporate criminal liability, corporations may be sanctioned for their employees' extraterritorial conduct under Article 11 of the TCC and other laws providing administrative sanctions (like Misdemeanours Law No. 5326) if certain conditions are met. Specifically, sanctions may be imposed on a corporation if: • A corporate director or representative commits the crime abroad; • The penalty for the crime is at least one year of imprisonment under Turkish law; • The corporate director or representative is prosecuted in Turkey; and • The crime is prosecutable in Turkey.
Can a parent company be criminally liable for the acts of a subsidiary?	Not applicable.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Not applicable for corporations. However, Article 278 of the TCC requires any person who is aware of the commission of a crime (but is not involved in its commission) to report it.
Is credit offered for self-reporting, cooperation, or remediation?	Not applicable.
Is the implementation of a corporate compliance program a defense to criminal liability?	Not applicable.

Is failure to implement a corporate compliance program a basis for criminal liability?	Not applicable.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	International cooperation in criminal matters is available per existing multilateral and bilateral agreements to which Turkey is a party. Concerning multilateral agreements, Turkey relies on the 1957 Council of Europe Convention on Extradition and the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters as the bases for its authority and obligation to cooperate with foreign governments. Turkey also has bilateral criminal rogatory agreements with countries such as the United States and China. If there is no agreement, criminal cooperation is to be resolved following the rules of reciprocity.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There is no available government guidance on prosecuting corporations.
Does the government incentivize corporations to identify individuals?	The government does not appear to incentivize corporations to identify individuals.
Does the government have a whistleblower program to incentivize whistleblowers?	The government does not appear to have a whistleblower program to incentivize whistleblowers.
Last Updated	November 23, 2020

UKRAINE

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Ukraine recognizes quasi-criminal liability where criminal law measures may be applied to a "legal entity" for the actions of its "authorized persons." The term "legal entity" is defined under the Ukraine Criminal Code, Sec. XIV-1, Art. 964, as any enterprise, institution, or organization, excluding governmental institutions. The term "authorized persons" is defined under the Ukraine Criminal Code, Sec. XIV-1, Art. 963, as officials of the legal entity or those that have the right to act on behalf of the legal entity—on the basis of law, statutory documents of the legal entity, or contract. An authorized person acts for the benefit of the legal entity if his or her act leads to an illegal benefit for the entity or if the act was aimed at evading legal liability. There are two ways to apply corporate criminal liability: (i) the authorized person acts on behalf of and for the benefit of the legal entity in a way that results in various specified crimes, or (ii) the authorized person fails to fulfill obligations to prevent corruption imposed on the authorized person by law or statutory documents in a way that leads to the commitment of certain crimes.
In what circumstances can a corporation be held criminally liable?	The Ukraine Criminal Code, Sec. XIV-1, Art. 963, lists specific crimes for which a corporation may face criminal law measures in the case of their commission by its official. These crimes include: • Money laundering; • Laundering of proceeds from illegal trafficking in drugs; • Bribery of an official of a private legal entity; • Bribery of a public person; • Offering, promising, or gifting to a public person for undue benefits; • Trading in influence; • Violation of the procedure for financing a political party, election campaigning, or referendum agitation; • Any terrorism-related offenses; and • Crimes that threaten national security and war crimes.
Is there individual liability for corporate criminal offenses?	Yes. The Ukrainian Constitution enshrines personal liability as the foundation of criminal law. If a prosecution is instituted against the legal entity, the authorized person must also be prosecuted because the legal entity is liable only through the actions of the authorized person (i.e., the essence of quasi-criminal liability).
What are the primary criminal government enforcement agencies?	The primary criminal enforcement agency in Ukraine is the Office of the Prosecutor General.

	The public prosecutors are tasked with the organization and procedural management of the pretrial investigation, resolution of other issues in accordance with the law during a criminal proceeding, supervision of covert and other investigative actions of law enforcement agencies, public prosecution in court, and the representation of the interests of the state. Pretrial investigation of crimes is mainly carried out by the National Police of Ukraine, the Security Service of Ukraine, the State Bureau of Investigation, and the National Anti-Corruption Bureau.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	The Ukraine Criminal Code, Sec. XIV-1, Art. 966, provides three penalties for corporate criminal liability: (1) a fine; (2) confiscation of property; and (3) liquidation. A legal entity must also reimburse all damages, the amount of the benefit received, or the amount that it could have received. Generally, in determining which punishment to impose, the court should consider the severity of the crime, the degree of criminal intent, the amount of damage, and the nature of the illegal gain. Along these lines, liquidation of the legal entity is statutorily reserved for crimes affecting national security, crimes against voting rights, civil crimes, and war crimes, as well as money laundering. Although the court determines the punishment, the fine may not exceed twice the amount of illegally obtained profit. If the illegal benefit was not yet received or the amount of such benefit cannot be calculated, the court weighs the severity of the crime in determining the penalty, pursuant to the Criminal Code, Sec. XIV-1, Art. 96-7.
What are the available forms of a criminal resolution?	Ukrainian law does not recognize DPAs or NPAs. Plea agreements or reconciliation agreements may be available for individuals, with limitations.
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties, and sanctions?"
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Under Ukraine Criminal Code, Sec. II, Art. 7, the criminal code applies to those that have committed a crime abroad, unless otherwise provided for by international treaty. Although this section of the Code specifies that "citizens" or "stateless persons" are liable under Ukrainian law for actions outside of Ukraine (while omitting legal persons), if the standards set out in Article 963 are met, the criminal code applies to the legal entity.
Can a parent company be criminally liable for the acts of a subsidiary?	Perhaps. Ukrainian law does not specifically address parent liability. Further, because corporate liability was established recently (in 2014), the case law has not yet fully developed an answer to this question. However, some theorize that elements of "piercing the corporate veil" found in Ukrainian law provide the foundation for parent liability.

SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. Ukrainian law provides for the right to remain silent and for the right against self-incrimination.
Is credit offered for self-reporting, cooperation, or remediation?	Perhaps. There is no official credit for self-reporting or cooperating with the public prosecutors. However, as part of discussing and entering into reconciliation and plea agreements (for individuals), the public prosecutor is instructed to consider the degree of cooperation in the proceedings. Further, in determining a sentence, Ukrainian law instructs judges to consider various circumstances (including cooperation) when deciding the extent of the fine, confiscation of property, or liquidation.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. Ukrainian law does not specifically provide a defense to corporate criminal liability due to the implementation of a compliance program. However, such a program may mitigate and reduce the risks of violating criminal law.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. Although the failure to implement a corporate compliance program is not a basis for criminal liability in and of itself, Ukrainian law (specifically, Section X, Article 61 of the law, titled "On the Prevention of Corruption") requires legal entities to operate an anticorruption program. This type of compliance program must contain the following: • Scope and range of persons to whom its provisions apply; • An exhaustive list and description of anticorruption measures and procedures and the order of their execution; • Norms of professional ethics for the employees of a legal entity; • Rights and responsibilities of employees and founders of the legal entity in connection with the prevention of corruption; • Rights and responsibilities of the Compliance Officer as an official responsible for the prevention of corruption and his subordinates; • The procedures for regular reporting to officials in the entity responsible for the program and the procedures for review of the program; • The procedure for proper supervision, control, and monitoring of compliance with the anticorruption program in the activities of a legal entity, as well as evaluation of the results of the implementation of its measures; • Conditions of confidentiality when employees inform the Compliance Officer about facts inciting them to commit a corruption offense or about corruption offenses committed by other employees or persons; • The procedure for the protection of employees who report corruption; • The procedure for employees to inform the Compliance Officer about the occurrence of a real or potential conflict of interest, as well as the procedure for resolving the identified conflict of interest; • The procedure for conducting individual consultations with employees on the application of anticorruption standards and procedures;

	• Disciplinary measures for employees who violate the provisions of the anticorruption program; and • The procedures for responding to, remediating, and reporting corruption-related activities. Because a legal entity can be held criminally liable for failing to prevent corruption as required by law, failing to establish an anticorruption program may indicate a failure to prevent corruption, resulting in criminal liability.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Increasingly, Ukraine has cooperated with foreign governments in criminal matters since the creation of the National Anti-Corruption Bureau of Ukraine in 2015. The agency has fostered increased international cooperation. Further, Ukraine is a signatory to various international treaties that enhance cooperation, including: • European Convention on Extradition; • European Convention on Mutual Assistance in Criminal Matters; • Council of Europe Civil Law Convention on Corruption; • Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; • UN Convention against Corruption; and • UN Convention against Transnational Organized Crime. Ukraine has not ratified the Rome Statute and does not participate in the International Criminal Court.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	Ukraine does not specifically identify guidance on prosecuting corporations. However, as stated above, legal entities are required to have an anticorruption compliance program in place with certain characteristics. Legal entities can use this law as a model to create an effective compliance program.
Does the government incentivize corporations to identify individuals?	Perhaps. There is no official incentive for legal entities to identify individuals; however, doing so may be seen as cooperation that will lessen, or alleviate altogether, criminal liability for the entity.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. Ukraine adopted whistleblower protections on January 1, 2020. The law provides protection from retaliation, in addition to the following: • Free legal aid; • Physical protection; • Reimbursement of any expenses related to the whistleblowing; • Psychological assistance to deal with stress from retaliation; • Exemption from legal liability in certain cases; and • A financial incentive of up to 10% of the monetary value of the revealed corruption.
Last Updated	November 16, 2020

UNITED KINGDOM

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	The United Kingdom recognizes corporations as legal persons, capable of being prosecuted just like an individual. Accordingly, a corporation may be prosecuted for a wide range of criminal offenses. Corporate criminal liability generally stems from the following legal principles: • **Identification Principle**: For offenses that require mens rea, liability may arise from the "identification principle" by imputing to the company the acts and state of mind of those who represent the "directing mind and will" of the company (e.g., a member of the board of directors or other person who is entrusted with the exercise of the powers of the company). • **Strict Liability**. • **Vicarious Liability**: A corporation can be held vicariously liable for the acts of its employees and agents, especially where a strict liability offense is committed in the course of the actor's employment. There are two ways to apply corporate criminal liability: (i) the authorized person acts on behalf of and for the benefit of the legal entity in a way that results in various specified crimes, or (ii) the authorized person fails to fulfill obligations to prevent corruption imposed on the authorized person by law or statutory documents in a way that leads to the commitment of certain crimes.
In what circumstances can a corporation be held criminally liable?	A corporation may be prosecuted for a wide range of criminal offenses. Typically, these involve: • Bribery and corruption (including failure to prevent an act of bribery); • Conspiracy; • Fraud (including securities fraud and accounting fraud); • Money laundering; • Tax evasion (including facilitation of tax evasion); • Antitrust violations; • Cybersecurity and data protection violations; • Health and safety offenses; and • Environmental offenses. Companies (and individuals) may also be held liable for inchoate offenses.
Is there individual liability for corporate criminal offenses?	Yes. Moreover, an individual and a corporate entity may be criminally liable for the same conduct.
What are the primary criminal government enforcement agencies?	The Crown Prosecution Service is the primary criminal government enforcement agency, although the Serious Fraud Office ("SFO") also plays a key role in investigating serious economic crimes.

FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Convicted companies can face penalties including unlimited fines, restitution, debarment from the public procurement process, or confiscation of assets. In fraud, bribery, and money-laundering cases, criminal fines can be as high as 400% of the financial harm caused by the crime.
What are the available forms of a criminal resolution?	Prosecutors have the power to enter into DPAs and NPAs with companies for fraud, bribery, and other economic crimes.
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties, and sanctions?"
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Some statutes enable the United Kingdom to exercise extraterritorial jurisdiction. For example, the Bribery Act of 2010 extends jurisdiction to those who have a "close connection" to the United Kingdom, regardless of where the criminal act occurred. This includes individuals and entities with a "close connection" to British citizens, residents, and corporations. Similarly, the Criminal Finances Act of 2017 (on anti-money laundering and counter-terrorist financing) applies to British corporations and foreign corporations that carry on business in the United Kingdom.
Can a parent company be criminally liable for the acts of a subsidiary?	Potentially. Parent companies can be criminally liable for the conduct of their subsidiaries in limited circumstances only. For example, under the Bribery Act of 2010, a parent corporation may be liable for the acts of an "associated person," e.g., an employee, agent, or subsidiary, if the associated person "bribes another person intending to (a) obtain or retain business for [the parent corporation] or (b) to obtain or retain an advantage in the conduct of business for [the parent corporation]."
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Yes. Generally, self-reporting is not required; however, individuals and entities in the "regulated sector" must report suspected money laundering or terrorist financing activities to the authorities.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. Credit is offered for self-reporting and cooperation. For example, the Serious Organised Crime and Police Act of 2005 grants prosecutors discretion to enter into NPAs or sentence-related agreements with offenders in exchange for cooperation. In addition, early acceptance of guilt may entitle a defendant to up to a one-third discount on the eventual sentence, depending on how early the plea is entered. Finally, self-reporting a crime may also increase the likelihood of securing a DPA.

Is the implementation of a corporate compliance program a defense to criminal liability?	Yes. Under some statutes (including the UK Bribery Act and the Criminal Finances Act 2017), the implementation of a corporate compliance program may be an affirmative defense to criminal liability. Even without such a statute, the implementation of a corporate compliance program may result in a reduced sentence by the court.
Is failure to implement a corporate compliance program a basis for criminal liability?	No, there is no specific offense for failing to implement a corporate compliance program.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. The United Kingdom is a party to various bilateral and multilateral treaties on mutual legal assistance.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The Crown Prosecution Service offers legal guidance ("Corporate Prosecutions: Legal Guidance") regarding prosecuting corporations, which addresses the bases for corporate liability, the key considerations for prosecution, and sentencing.
Does the government incentivize corporations to identify individuals?	Yes. The SFO has issued guidance ("Operational Handbook: Corporate Co-Operation Guidance") that defines "cooperation" as conduct that includes "identifying suspected wrong-doing and criminal conduct together with the people responsible, regardless of their seniority or position in the organisation." As a result, to obtain cooperation credit, corporations are incentivized to identify culpable individuals.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. There are two main pieces of legislation that protect whistleblowers in the United Kingdom: the Accountability and Whistleblowing Instrument of 2015 specifically regulates financial institutions, and, beyond that sector, the Public Interest Disclosure Act of 1998 provides protection to employees who make protected disclosures (including if they expose a criminal offense).
Last Updated	December 4, 2020

MIDDLE EAST

ISRAEL

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Under Section 23(a)(2) of Israel's Penal Law, a corporation may be held criminally liable for the acts of its "organs." An "organ" is defined as the board, managers, or any person whose action is deemed to be that of the company. Courts have discretion in determining whether an actor is an "organ" for whose acts the corporation is liable and generally interpret this definition broadly. In conducting this inquiry, courts ask—in light of the specific circumstances and the offender's function, authority, and responsibility in handling and managing the company's affairs—whether there is a reason to regard the offender's actions, mens rea, or negligence as that of the company. Corporations may also be liable even when a specific actor cannot be identified in circumstances where the offense was committed by omission, and provided that the corporation breached a legal duty to act. Moreover, under Israel's Companies Law, all private Israeli companies must maintain accurate and updated accounts and financial statements. Public companies are similarly regulated under Israel's Securities Law.
In what circumstances can a corporation be held criminally liable?	Possible bases of corporate criminal liability include: • The Penal Law; • The Companies Law; • The Planning and Building Law; • The Securities Law; • The Antitrust Law; • The Income Tax Ordinance; • The Prohibition on Money Laundering Law; • The Counterterrorism Law; and • The Dangerous Drugs Ordinance.
Is there individual liability for corporate criminal offenses?	Yes. Individuals are usually prosecuted jointly with the corporation. This is because corporate liability will usually be imposed provided that an actor—the "organ"—satisfies the elements of the offense, specifically the mens rea or negligence required. Prosecutors have discretion with regard to whether the individual and corporation will be tried separately and whether charges should be brought. However, courts can overrule the decisions of prosecutors. Defendants can petition to be tried separately or together. Additionally, vicarious liability for directors, managers, and employees is fairly common but must be imposed by statute. For example, vicarious liability may arise in cases where: (i) an "organ" acts in such a way as to satisfy all elements of a crime; (ii) his conduct establishes corporate criminal liability for the crime; and (iii) the statute governing that crime authorizes vicarious liability for managers, directors, or employees.

	Although vicarious liability schemes vary by statute, they generally impose liability whether or not the individual knew or should have known about the conduct when the individual did not take reasonable measures to prevent the offense. In this situation, the presence of strong internal controls and compliance measures may help an individual avoid vicarious liability by establishing that he did take reasonable measures to prevent it.
What are the primary criminal government enforcement agencies?	Generally in Israel, there is a separation between the investigative bodies and the prosecution bodies. The main investigative bodies in relation to corporations are: the Israeli Police (complex economic investigation matters that are investigated by the police are usually investigated by a unit for fraud investigations, which is a department of the Lahav 433 task force), the Israel Securities Authority, the Israel Tax Authority, the Israel Competition Authority, the Ministry of Environmental Protection (for environmental offenses), the Ministry of Labor (for labor law offenses), and the Real Estate Enforcement Unit in the Ministry of Finance. In addition, Israel is also a member of Interpol. The primary prosecution agency is the Office of the State Attorney. Cases are prosecuted through several regional District Attorneys' offices and two national units that specialize in economic and public corruption crimes. In addition, several of the above-mentioned authorities, such as the Israel Tax Authority and the Israel Competition Authority, have internal prosecution units. However, all prosecution units in Israel, including the State Attorney, are subject to the supervision and responsibility of the Israeli Attorney General.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	As an initial matter, corporations cannot be imprisoned. That said, corporations are usually indicted and stand trial, with criminal fines being imposed as the result of conviction. If provided for by the Minister of Justice, fines can be imposed without an indictment, and the corporation may choose to accept the conviction and pay the fine or stand trial. The Penal Law sets out a standard fine scheme, ranging from approximately US$4,000 to US$65,000 (for each offense). However, individual statutes impose much higher fines. For example, several provisions of the Securities Law and the Prohibition on Money Laundering Law prescribe a fine of up to approximately US$1.65 million. In addition, in an offense in which pecuniary damage was intentionally caused or an economic benefit was obtained, the court is entitled to impose a fine of four times the value of the damage or the benefit, even if the amount is higher than the amount detailed above. In addition, some statutes provide for injunctive relief. For example, the Planning and Building Law allows a court to order that an illegal building be torn down.
What are the available forms of a criminal resolution?	In the Penal Code, and in other laws such as the Securities Law, there are alternatives to filing indictments. This is done through an Agreement for Closure of Criminal File With Conditions (the Israeli parallel to an NPA). Under this alternative, a prosecutor

	who has made a decision to file an indictment may offer the suspect (individual or corporation) the option to enter into an agreement under which the criminal case will be closed without an indictment but with various obligations and sanctions that the suspect takes upon himself. Such sanctions will often also include fines. Once an indictment has been filed, a plea agreement can be reached in any case, at any stage. Any plea agreement requires court approval. Therefore, even in cases where the parties reach an agreement prior to the filing of an indictment, the prosecution must file an indictment and submit the plea for court approval. The plea agreement includes an agreement as to the facts and the defendant's confession to the relevant offense provision. There are plea agreements that include an agreement as to the punishment, and there are plea agreements in which the parties leave the issue of punishment to a court decision. In all cases, the court has discretion whether to approve the plea agreement or reject it. The court can also accept the agreed confession regarding the facts and provisions of the law but reject the agreement as to the sentence. Historically, courts have rarely rejected plea agreements. In addition, the Administrative Offences Law of 1985 allows the Minister of Justice to set out offenses for which a defendant may choose between prosecution or payment of a fine. In such cases, payment of the fine admits liability and results in a conviction. By contrast, other statutes, such as the Economic Competition Law, provide for "agreed" fines that do not result in a conviction. These fines are an alternative to indictment and prosecution and require court approval. Prosecutors have discretion in whether to prosecute a defendant, but a court must approve the choice not to prosecute. In making such a determination, courts are guided by two factors: (1) whether there is a reasonable chance of conviction and (2) whether prosecution is in the public interest. The public interest factor is fairly broad and includes whether a prosecution would lead to financial instability, loss of jobs, excessive expense of public funds, or loss of public trust in the judicial system. Notably, the decision not to prosecute does not take the form of an official DPA.
What are the potential collateral consequences of a corporate criminal conviction?	As noted above, corporate sanctions generally take the form of criminal fines. However, in certain regulatory contexts, other consequences may exist. For example, in the antibribery context, a conviction may result in debarment or temporary or permanent exclusion from access to public benefits. In addition, although administrative or civil sanctions are not available to the courts, public authorities may choose to exclude companies on the basis of a criminal conviction.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. Article Three of the Penal Law outlines the applicability of Israeli laws to foreign offenses. This section makes Israeli law applicable: • To any foreign felony or misdemeanor committed by an Israeli citizen or resident; • To foreign offenses punishable under international conventions of which Israel is a part; and • Upon request of a foreign state when the offender is an Israeli resident located in Israel and the foreign state is not prosecuting the offense.

	For purposes of the second scenario, Israel has been a party to the OECD Convention since 2009. As such, the offense of bribing foreign public officials is a part of Israel's Penal Law, and Israel has established jurisdiction in the country where the bribe was paid. Israel is also a signatory of the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.
Can a parent company be criminally liable for the acts of a subsidiary?	Theoretically yes, but this does not happen in practice. In Israel, corporations are each considered separate legal persons and, as such, are not responsible for the acts of another corporation absent some statutory mandate. Moreover, because corporate liability is established by the actions of an "organ," the entity employing the "organ" is the party liable—not the parent—because the "organ" was not acting on the "ego" (behalf) of the parent.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Generally, no. Corporations have the constitutional right of human dignity and liberty, from which Israeli due process rights arise. Therefore, to prevent self-incrimination, self-reporting is not required unless an applicable law imposes such a duty. For example, the Securities Law requires that corporations disclose all information that a reasonable investor would find relevant. This would likely include any unlawful conduct about which the corporation is aware. Therefore, reporting, by way of inclusion in a prospectus for the offer of securities, is required. Additionally, corporations are encouraged to seek "pre-rulings" from relevant regulatory authorities regarding the legality of their actions and procedures.
Is credit offered for self-reporting, cooperation, or remediation?	There is no official system of credit or declination for corporate conduct in an investigation or prosecution. Recent updates to prosecutorial guidelines encourage consideration of the corporation's cooperation. In practice, companies that initiate self-reporting of offenses can improve their legal position, reach more favorable arrangements, and perhaps even avoid the filing of an indictment and obtain an NPA.
Is the implementation of a corporate compliance program a defense to criminal liability?	No, it is not a true defense to liability. The conduct and state of mind required for corporate liability are that of the individual "organ." These are imputed to the corporation, and the corporation is liable on that basis. Therefore, internal controls and compliance measures cannot generally defend against punishment because they do not change the "organ's" state of mind. They are, however, useful as an individual defense against vicarious liability when it is imposed by statute. In addition, the implementation of an internal enforcement plan can serve as circumstantial defense for omission offenses in which no organ was found. Moreover, the implementation of an internal enforcement plan can serve as a very significant argument at the sentencing stage and lead to a reduction in fines and, in some cases, may lead to a lack of conviction within the criminal rout or encourage the state to defer the case to alternative enforcement options such as NPAs.

	In October 2019, the Israel State Attorney published a new guideline for the prosecution of corporations, which establishes that the main goal of corporate liability is deterrence. This emphasis creates incentives to implement internal controls and compliance programs. For instance, the guideline lists considerations that a prosecutor must consider when examining the issue of public interest in prosecuting a corporation. These factors include: • The severity of the offense and the circumstances surrounding it; • The nature of the suspect corporation; • The strength of the corporation's culture of compliance with the law; • The extent of top officers' involvement in the commission of the crime; • The extent of the corporation's cooperation with and contribution to the investigation; • The harm that would be caused as a result of the corporation's prosecution; • Alternative enforcement measures; • Changes in corporate control or significant changes in the corporation's activity; • The corporation's criminal history; and • Whether the corporation is in liquidation. The guideline also states that the existence of strong internal controls shall be considered a mitigating factor. This reflects the first time that Israeli policy has officially reflected the importance of internal control mechanisms.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. Failure to implement a compliance program is not an independent offense.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. The Penal Law provides that if a corporation is fined by a foreign jurisdiction, and the offense is also punishable under Israeli law, Israel will collect the fine for disbursement to the foreign jurisdiction, accepting the conviction as valid under Israeli law. Moreover, Israel is a signatory to the Hague Convention, the Hague Evidence Convention, the Hague Service Convention, the European Convention on Extradition, the United Nations Conventions against Corruption and against Transnational Organized Crime, the OECD Convention, and seven bilateral treaties with individual countries. In addition, Israel has signed but not ratified the Rome Statute of the International Criminal Court. In recent years, Israel has investigated and indicted increasing numbers of companies for large crimes. In many of these proceedings, Israel has cooperated with foreign authorities.

GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The Office of the State Attorney of Israel, a department of the Minister of Justice, sets forth guidelines for prosecutors. These guidelines supplement the Attorney General of Israel's Guidelines, which consist of directives regarding civil, criminal, and constitutional actions. The guidelines include sections regarding corporate liability, including foreign antibribery law and the administration of an immunity program in antitrust offenses.
Does the government incentivize corporations to identify individuals?	Because corporate liability is imposed on the basis of an individual's acts through the "organ" doctrine, an individual must first be identified before a corporation is indicted. Once the corporation is indicted, the relevant statute may provide vicarious liability for other individuals. The identification of additional bad actors may be perceived as cooperation with the authorities, which may benefit the corporation during the investigation and prosecution.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. In 2008, the Israeli Parliament passed the Protection of Workers Law. The law protects workers who report violations of law and ethics, including the imposition of a civil no-fault statutory fine on an employer who violates whistleblower protections and a discretionary civil punitive fine. It also imposes criminal fines or imprisonment on an employer who retaliates against a whistleblower.
Last Updated	November 16, 2020

SAUDI ARABIA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	A corporation may be vicariously liable under a theory of *respondeat superior*.
In what circumstances can a corporation be held criminally liable?	Corporations may be held criminally liable under the following statutes: • Article 19 of the Anti-Bribery Law, Royal Decree No. M/36 of 29/12/1412H (June 30, 1992). • Article 15 of the Anti-Commercial Fraud Law, Royal Decree No. M/19 of 23/4/1429H (Apr. 29, 2008). • Article 12 of the Anti-Concealment Law, Royal Decree No. M/22 of 04/05/1425H (June 21, 2004) (*note: a new Anti-Concealment Law (Royal Decree No. M/4 dated 01/01/1442H) has been enacted but will not come into force until 180 days after it has been published in the Saudi Arabian Official Gazette*). • Article 31 of the Anti-Money Laundering Law, Royal Decree No. M/20 of 05/02/1439H. • Article 55 of the Capital Markets Law, Royal Decree No. M/30 of 2/6/1424H (July 31, 2003). • Article 217 of the Companies Law, Royal Decree No. M/3 of 29/1/1437H (Nov. 11, 2015). • Article 19 of the Competition Law, Royal Decree No. M/75 of 29/06/1440H (Mar. 6, 2019). • Enforcement Law, Royal Decree No. M/53 of 13/8/1433H (July 3, 2012). • Foreign Investment Law, Royal Decree No. M/1 of 5/1/1421 H (Apr. 10, 2000).
Is there individual liability for corporate criminal offenses?	Yes. While some laws may require a certain level of intent (i.e., willfulness) to hold an individual criminally liable (e.g., Art. 211, Companies Law, Royal Decree No. M/3 of 29/1/1437H (Nov. 11, 2015)), other laws impose strict liability (e.g., Art. 55(b)(1), the Capital Markets Law, Royal Decree No. M/30 of 2/6/1424H (July 31, 2003)).
What are the primary criminal government enforcement agencies?	The Saudi Control and Anti-Corruption Authority (Nazaha) and the Bureau of Investigation and Public Prosecution are primarily responsible for investigating and prosecuting cases of corporate misconduct. Other key agencies include the Capital Markets Authority, the General Authority of Competition, the Ministry of Commerce, the Ministry of Interior, and the Ministry of Investment.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Corporations may be subject to fines with amounts outlined by each of the relevant criminal laws. For instance, a company may be fined under the Anti-Bribery Law by up to 10 times the amount of the bribe if the crime is committed in the company's interest.

	Moreover, violations of the Competition Law may result in a fine of up to 10% of a company's total annual sales or 10 million riyals (approximately US$2.6 million) (Art. 19, Anti-Bribery Law). As to individual liability related to corporate misconduct, culpable directors and officers may receive fines and prison time. For example, directors and officers may receive a maximum fine of 5 million riyals (approximately US$1.3 million), a maximum prison term of five years, or both for willfully providing false or misleading information in a financial statement (Art. 211, Companies Law).
What are the available forms of a criminal resolution?	Saudi law does not explicitly provide for alternative settlement agreements like DPAs or NPAs, although the Capital Markets Law allows for such arrangements. However, plea bargaining is available in those cases where authorities determine it is consistent with the public interest.
What are the potential collateral consequences of a corporate criminal conviction?	In addition to fines, corporations may also be subject to the following collateral consequences, depending on the applicable laws: • Debarment for government contracts for at least five years; • Debarment from contracting with financial institutions; • Shut down of business for up to one year; • Seizure of property; • Revocation of registration licenses; and • Sanctions against management.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Generally, no. The exception is the Competition Law, which extends to practices occurring outside Saudi Arabia that have an adverse effect on competition within Saudi Arabia (Art. 3, Competition Law).
Can a parent company be criminally liable for the acts of a subsidiary?	Saudi law does not explicitly provide that parent companies may be criminally liable for the acts of their subsidiaries. In practice, absent malfeasance by the parent company itself, the parent company—as a legal entity separate and distinct from its subsidiary—is not criminally liable for the acts of its subsidiary.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Certain statutes impose an obligation to self-report. For example, under the Anti-Commercial Fraud Law, companies must notify the Ministry of Commerce and Industry when they become aware of the fact that they have distributed a fraudulent product in violation of the law. Moreover, companies that become aware of transactions that raise suspicions of money laundering or financial support for terrorism must notify the country's Financial Investigation Unit. More generally, it can be argued that Islamic law (Shariah) as enforced in Saudi Arabia imposes a general requirement to self-report.

Is credit offered for self-reporting, cooperation, or remediation?	Under the Anti-Bribery Law, companies may become exempt from punishment if they inform the competent authorities of a crime before the authorities become aware of the misconduct, subject to the sole discretion of the authorities (Art. 16, Anti-Bribery Law). In addition, under the Competition Law, the General Authority for Competition can choose not to refer a party in violation of the Competition Law for prosecution if such party discloses the violation and identifies any other parties involved (Art. 23, Competition Law).
Is the implementation of a corporate compliance program a defense to criminal liability?	There is no express provision making the implementation of a corporate compliance program a defense to criminal liability.
Is failure to implement a corporate compliance program a basis for criminal liability?	Saudi law generally does not require—under threat of criminal liability—that companies adopt corporate compliance programs. However, the Anti-Money Laundering Law requires that institutions implement internal monitoring to discover instances of money laundering (Art. 5, Anti-Money Laundering Law). The failure to do so could result (among other things) in a fine of up to 5 million riyals (approximately US$1.3 million) and/or up to a two-year prison sentence for board members, owners, managers, and other employees (Art. 25, Anti-Money Laundering Law).
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Saudi Arabia is a party to the UN Convention against Corruption ("UNCAC") and has signed a number of bilateral and multilateral cooperation agreements. Experience indicates the Saudi authorities regularly cooperate and share information with other governments in investigating and prosecuting criminal matters.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The Saudi government has not yet publicly provided robust guidance on prosecuting corporations.
Does the government incentivize corporations to identify individuals?	The government has not publicly provided incentives to corporations to identify individuals. However, the General Authority for Competition may settle with, or decline to prosecute, companies for violations of the Competition Law if the company identifies culpable individuals on its own initiative.

Does the government have a whistleblower program to incentivize whistleblowers?	The Anti-Bribery Law authorizes the Ministry of Interior to pay whistleblowers a reward with a minimum of 5,000 riyals (approximately US$1,330) and a maximum of half the amount of the bribe paid (Art. 17, Anti-Bribery Law). Similarly, whistleblowers who assist in exposing violations of the Anti-Commercial Fraud Law may receive a maximum of 25% of the fine levied (Art. 11, Anti-Commercial Fraud Law). In addition, the Anti-Concealment Law provides for the establishing of rules to give financial incentives to employees to detect violations, and a reward of not more than 30% of the fine levied, which may be issued under the discretion of the Minster, to whomever provides information leading to a successful prosecution.
Last Updated	December 7, 2020

UNITED ARAB EMIRATES

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability is based primarily on Article 65 of the Federal Penal Code (Federal Law No. 3 of 1987, as amended), titled Liability of Juristic Persons, which provides that "[j]uristic persons (other than government services and its official departments, public organizations and institutions) shall be held criminally liable for the crimes perpetrated by their representatives, directors and agents for their account or in their name." Article 92 of the Civil Transactions Code (Federal Law No. 5 of 1985) defines "juristic persons" as, among other things, civil and commercial companies. Additionally, although the UAE does not have a stand-alone anticorruption statute, corruption is prohibited pursuant to several federal and emirate-level statutes, regulations, and codes of conduct. These include, but are not limited to: the Federal Penal Code (Federal Law No. 3 of 1987, as amended by Law No. 24 of 2018); the penal codes of individual emirates (e.g., the Dubai Penal Code); the Federal Human Resources Law (Federal Decree Law No. 11 of 2008) and related legislation; the human resources laws of the individual emirates (e.g., Abu Dhabi Law No. 1 of 2006, Dubai Law No. 27 of 2006); the Dubai Financial Fraud Law (Dubai Law No. 37 of 2009); and various ministerial and department-level codes of conduct.
In what circumstances can a corporation be held criminally liable?	A corporation may be prosecuted for a wide range of criminal offenses. Typically, these involve: • Bribery; • Corruption; • Money laundering; • Antitrust violations; • Corporate governance-related issues; • Fraud; • Breach of trust; • Cybercrimes; • Securities and stock exchange-related violations; • Labor violations (including immigration and residency crimes, as well as health and safety-related violations); • Forgery; • Embezzlement of public funds; • Trademark violations; and • Dishonored or bounced checks. The statutory bases for certain of these offenses include Federal Penal Code, Arts. 234–37 (bribery) (Federal Law No. 3 of 1987, as amended); Federal Decree Law No. 20 of 2018, Art. 4 (money laundering); Federal Law No. 4 of 2012, Art. 26 (criminal antitrust violations); and Commercial Companies Law, Arts. 340–70 (corporate governance issues) (Federal Law No. 2 of 2015).

Is there individual liability for corporate criminal offenses?	Yes. Individuals may be liable for the conduct underlying a corporate criminal offense. Article 65 of the Federal Penal Code explicitly states that corporate criminal liability "shall not prevent [against] penalizing the perpetrator of the crime personally by the penalties prescribed by Law."
What are the primary criminal government enforcement agencies?	Under the Criminal Procedures Law (Federal Law No. 35 of 1992, as amended), the Public Prosecutor generally has exclusive authority to initiate and prosecute criminal proceedings. However, the Public Prosecutor may not initiate criminal proceedings without the verbal consent of the victim or its legal representative in certain cases. The police also play a key role in gathering evidence in criminal investigations. The UAE Defense Ministry and some police departments have dedicated anticorruption units. The State Audit Institution ("SAI") is primarily responsible for auditing the spending of public funds. It also has broad authority in handling fraud and corruption matters. The SAI may independently initiate corruption investigations and may refer complaints or cases to the police or the public prosecutor. The SAI also operates a system through which users can report suspected fraud or corruption. The SAI is responsible for auditing approximately 70 government or semi-government bodies in the UAE, 12 of which are corporations wholly or partially owned by the federal government. Additionally, the Abu Dhabi Accountability Authority ("ADAA") is responsible for ensuring compliance by public entities within the Emirate of Abu Dhabi.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Depending on the crime committed and the sanctions outlined in the applicable legislation, corporate entities may face fines, confiscation of assets, freezing of funds, cancellation of trade licenses, and closure of their establishments. Where the principal penalty is nonfinancial, Article 65 of the Federal Penal Code limits the penalty that may be imposed on a corporation to a maximum fine of AED 500,000 (approximately US$136,054). Individuals may be subject to fines, imprisonment, and a bar on doing business in, or entering, the UAE.
What are the available forms of a criminal resolution?	UAE law does not explicitly provide for alternative settlement agreements like DPAs or NPAs. However, some matters may be resolved by "reconciliation" (introduced by Federal Decree-Law No. 17 of 2018)—i.e., a settlement procedure by which a company may avoid criminal proceedings by paying a fine. The crimes where reconciliation is permitted are specified in Article 347 of the Criminal Procedures Law.
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties, and sanctions?"

EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	The Federal Penal Code does not contain any provisions specifically referencing the criminal liability of corporations for acts committed abroad. However, the Federal Penal Code does apply to crimes that were committed abroad if part of the crime was committed in the UAE. Other laws do contain provisions on extraterritorial applicability. For example, the Antitrust Law (Federal Law No. 4 of 2012) states that it applies to any entity whose activities outside the UAE may negatively affect competition within the country.
Can a parent company be criminally liable for the acts of a subsidiary?	The Federal Penal Code does not provide for criminal liability for the acts of a subsidiary; however, a parent company that is deemed an accomplice or the author of a crime that is fully or partially committed in the UAE may be held criminally liable.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Article 274 of the Federal Penal Code provides for penalties if a person becomes aware of a crime but does not report it to the competent authorities. While the Penal Code does not define the circumstances in which an individual must report, in practice these penalties are more often applied to individuals who might otherwise also be considered accomplices to the underlying crime.
Is credit offered for self-reporting, cooperation, or remediation?	An individual who reports an offense before it is discovered by the Public Prosecutor may be exempt (within the prosecutor's sole discretion) from individual criminal liability under the Federal Penal Code.
Is the implementation of a corporate compliance program a defense to criminal liability?	There is no express provision making the implementation of a corporate compliance program a defense to criminal liability.
Is failure to implement a corporate compliance program a basis for criminal liability?	There is no express provision making the failure to implement a corporate compliance program a basis for criminal liability; however, the Commercial Companies Law imposes a duty on any person authorized to manage a company to act as a "prudent person," i.e., a person with sufficient experience and the necessary commitment to his or her duties. Furthermore, AML regulations in certain free zones (such as the Dubai International Financial Centre) require institutions to implement internal monitoring to discover instances of crime, such as money laundering.

COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. The Law on International Judicial Co-operation in Criminal Matters (Federal Law No. 39 of 2006) governs judicial cooperation with other foreign government authorities in criminal matters. Furthermore, the UAE is a party to conventions and bilateral treaties on mutual legal assistance (including, for example, the United Nations Convention against Organized Crime and treaties with countries including all the other countries in the Gulf Cooperation Council (such as the Arab Anti-Corruption Convention), as well as India, the United Kingdom, and Australia). Experience indicates that the Emirati authorities regularly cooperate and share information with other governments to investigate and prosecute crimes.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	Government agencies have not yet provided public guidance on prosecuting corporations.
Does the government incentivize corporations to identify individuals?	The government has not publicly provided incentives to corporations to identify individuals.
Does the government have a whistleblower program to incentivize whistleblowers?	Until recently, there were no laws that specifically provided whistleblowers with protection. Although the Federal Penal Code places a duty on all persons to report a crime, it does not provide monetary incentives (or protections) to whistleblowers. In 2018, the Anti-Money Laundering Law (Federal Decree Law No. 20 of 2018) introduced some protections for whistleblowers on matters relating to money laundering and terrorism. Similarly, Dubai's Financial Crime Law of 2016 (Dubai Law No. 4 of 2016) introduced limited protections for whistleblowers who report certain activities that may affect Dubai's economic security to the Dubai Economic Security Centre. In April 2020, the UAE issued a draft law that aims to protect whistleblowers and witnesses of crimes in an effort to encourage reporting. According to public sources, the draft law is under discussion at the Federal National Council; no time frame has been provided for its ratification. In the meantime, it is important to note that individuals may face criminal liability under the Federal Penal Code or privacy laws for disclosing any person's or entity's confidential information without consent.
Last Updated	December 7, 2020

NORTH AMERICA

CANADA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes. *[In Canada, corporations may be charged with criminal conduct in federal and provincial courts. This publication addresses federal prosecution.]*
On what principles or legislation is corporate criminal liability based?	For offenses committed after March 2004, the liability of organizations is determined by the actions and intentions of the corporation's senior officers. "Senior officer" is broadly defined in the Criminal Code (Sec. 2) as "a representative who plays an important role in the establishment of an organization's policies or is responsible for managing an important aspect of the organization's activities … and includes a director, its chief executive officer and its chief financial officer." For offenses committed prior to March 2004, the "identification theory" is used to establish corporate criminal liability. This theory is based on attributing the actions and intentions of the "directing mind"—directors or officers—of the corporation with respect to the impugned conduct. Criminal liability will not attach to the corporation, however, where the individual acts wholly in fraud or for the individual's, and not the corporation's, benefit.
In what circumstances can a corporation be held criminally liable?	Under the Criminal Code and the Corruption of Foreign Public Officials Act ("CFPOA"), common bases for establishing corporate criminal liability include: • Negligence (Criminal Code, Sections 219–22); • Theft (Criminal Code, Section 322); • False pretenses (Criminal Code, Sections 362(1)(c), 362(1)(d)); • Forfeiture (Criminal Code, Sections 462.31, 462.37); • Public stores (Criminal Code, Section 418(2)); • Bribery, corruption, and inappropriately influencing public and municipal officials (Criminal Code, Sections 119–26; CFPOA, Sections 3–5); • Threats and retaliation against employees (Criminal Code, Section 425.1); and • Fraud (Criminal Code, Sections 380, 380(2), 382.1(1), 382.1(2), 400).
Is there individual liability for corporate criminal offenses?	Yes, both individuals and corporations are subject to these laws.
What are the primary criminal government enforcement agencies?	The primary criminal government enforcement agencies in Canada are the Royal Canadian Mounted Police, the Canadian Securities Intelligence Service, and the dedicated police forces of some of the Canadian provinces and major municipalities.

FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Under both the Criminal Code and the CFPOA, a company convicted of an indictable offense faces a fine of an unlimited amount, whereas a corporation convicted of a summary conviction offense can be fined up to CA$100,000. The court may also prescribe additional conditions on an organization (see Criminal Code Sec. 732.1(3.1)), such as establishing policies, standards, and procedures to reduce the likelihood of an organization committing a subsequent offense, or providing information about the offense to the public. These additional conditions are potentially unlimited and can be imposed on the corporation for up to three years. A corporation that contravenes a provincial Securities Act can face a fine of up to CA$5 million. A corporation may also be ordered to make restitution or pay compensation in relation to the offense to an aggrieved person.
What are the available forms of a criminal resolution?	Plea agreements, DPAs, NPAs, and remediation agreements are all available in Canada. Companies may ask to settle the proceeding with a plea bargain, although the sentencing judge is not bound by the request. However, there is a presumption that a submission agreed to by the Crown and the defendant should be followed, unless it would bring the administration of justice into disrepute or is otherwise not in the public interest. Sections 715.3–715.43 of the Criminal Code permit organizations to resolve criminal cases by entering a remediation agreement with the prosecutor to stay the proceedings related to that offense if the organization complies with the terms of the agreement. Remediation agreements are appropriate when there is a reasonable prospect of conviction and the agreement is in the public interest and appropriate in the circumstances.
What are the potential collateral consequences of a corporate criminal conviction?	Corporations convicted of a CFPOA offense or certain offenses under the Criminal Code face debarment from bidding on projects financed by the World Bank Group, pursuant to the bank's fraud and corruption policies, as well as cross-debarment by other multinational development banks pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. Under Section 750(3) of the Criminal Code, certain offenses may result in a corporation's inability to contract with the Canadian government or to receive any benefit under a contract with the Canadian government. Corporations convicted of certain offices under the CFPOA, the Criminal Code, or the provincial Securities Acts may also face share price decreases, shareholder class actions, significant legal costs, loss of key personnel, and reputational damage.

EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	The CFPOA regulates acts committed anywhere in the world by: • A Canadian citizen; • A permanent resident of Canada; and • A corporation, company, firm, or partnership that is incorporated, formed, or otherwise organized under the laws of Canada or a Canadian province. Like the U.S. FCPA, the CFPOA applies to both individuals and corporations irrespective of nationality. Unlike the U.S. FCPA, however, Canada will try only criminal cases involving a "real and substantial" connection to Canada.
Can a parent company be criminally liable for the acts of a subsidiary?	Canadian courts recognize the "corporate veil" but may pierce the corporate veil, exposing the parent corporation to criminal liability for the acts of its subsidiary, where it is established that: (i) the subsidiary corporation is merely the alter ego of the parent corporation, and (ii) the corporation was created for, or is being used for, a fraudulent or improper purpose.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No. It is also up to the corporation to advise its employees of a request by the police for assistance in the investigation of a criminal offense and the corporation's decision to not cooperate. The corporation may remind employees of the importance of maintaining the confidentiality of corporate information. However, the corporation cannot direct an employee not to cooperate.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. The general expectation is that self-reporting in good faith will be viewed as a mitigating factor during sentencing, but the weight of this factor is reduced in cases where it is inevitable that the offense would have been discovered even without the self-reporting.
Is the implementation of a corporate compliance program a defense to criminal liability?	No.
Is failure to implement a corporate compliance program a basis for criminal liability?	If an organization knew of past problems and failed to take remedial steps, this could be considered an aggravating course of conduct and taken into account by the court.

COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. On December 17, 1997, Canada ratified the OECD Convention. Canada is a party to the Inter-American Convention against Corruption and the United Nations Convention against Corruption and is a member of the International Foreign Bribery Taskforce.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	In May 1999, Canada's federal Department of Justice published "The Corruption of Foreign Public Officials Act: A Guide," which provides a general overview and background information about the CFPOA. Similarly, the Public Prosecution Service of Canada ("PPSC")—i.e., the agency in charge of prosecuting offenses under the CFPOA—has a PPSC Deskbook, which sets out guiding principles, directives, and guidelines for the exercise of federal prosecutorial discretion. The PPSC also has a "Proposed Best Practices for Prosecuting Fraud Against Governments."
Does the government incentivize corporations to identify individuals?	Under Canada's new remediation agreement regime that went into effect on September 19, 2018, prosecutors will consider whether a corporation has identified or expressed a willingness to identify any person involved in the wrongdoing as a factor in determining whether a remediation agreement is in the public interest and appropriate under the circumstances.
Does the government have a whistleblower program to incentivize whistleblowers?	The Canada Revenue Agency and the Ontario Securities Commission operate whistleblower programs that provide financial incentives to whistleblowers under certain conditions. The Canada Revenue Agency offers informants between 5% and 15% of amounts collected, while the Ontario Securities Commission will pay up to CA$5 million for tips that lead to successful enforcement actions.
Last Updated	November 11, 2020

MEXICO

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes. Corporations may be charged with criminal conduct in both state and federal courts in Mexico. This publication focuses primarily on federal criminal prosecution, although we note that some states (including Mexico City, Nuevo Leon, Tamaulipas, Quintana Roo, and Baja California Sur) have their own regulatory frameworks for criminal corporate liability. In states that do not have their own frameworks (such as Jalisco, Baja California, Chihuahua, and Sonora), companies operating in those states may still be criminally prosecuted under federal laws.
On what principles or legislation is corporate criminal liability based?	Under the Mexican Federal Criminal Code ("FCC") and the National Criminal Procedure Code ("NCPC"), as well as criminal codes of the states of the Mexican Republic, a corporation may be held criminally liable when: (i) crimes are committed in their name, on their behalf, to their benefit, or using means that they provide; and (ii) the company failed to exercise due control. At the federal level, the bases for corporate criminal liability may include: • Federal Criminal Code ("*Código Federal Penal*"); and • National Criminal Procedure Code ("*Código Nacional de Procedimientos Penales*"). At the state level, the bases for corporate criminal liability may include: • Local Criminal Codes (i.e., "*Código Penal de la Ciudad de México*"); and • National Criminal Procedure Code ("*Código Nacional de Procedimientos Penales*").
In what circumstances can a corporation be held criminally liable?	Under the FCC, criminal offenses with corporate criminal liability include: • Bribery; • Corruption of minors; • Influence peddling; • Forgery and alteration of currency; • Crimes against national consumption and wealth; • Trafficking of minors or individuals without the capacity to understand the meaning of the facts; • Regular marketing of stolen goods; • Fraud; • Concealment; • Operations with illicit proceeds; • Crimes against the environment; • Copyright; • Smuggling; and • Tax fraud.
Is there individual liability for corporate criminal offenses?	Yes. Individuals and companies may be jointly criminally prosecuted for wrongdoings related to the same alleged criminal conduct, although individual criminal liability is decided independently from corporate criminal liability.

What are the primary criminal government enforcement agencies?	The Federal Prosecutor's Office ("*Ministerio Publico*")—which is subordinate to the Attorney General's Office ("*La Fiscalía General de la Republica*")—is responsible for investigating and prosecuting federal crimes. The Federal Prosecutor's Office is made up of several divisions, including the Legal and International Affairs Sub-Prosecutor's Office, the Organized Crime Specialized Sub-Prosecutor's Office, and the Corruption Crime Specialized Attorney's Office, among many others. Local prosecutors have the same powers as federal prosecutors, although limited to the state level.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Under the NCPC, legal entities ("*personas juridicas*") can be subject to the following sanctions: (i) monetary fines; (ii) forfeiture of the instruments, objects, or products of the crime; (iii) publication of the sentence; (iv) dissolution; or (v) other sanctions expressly determined in criminal laws. The NCPC provides several parameters for applying fines and sanctions on legal entities, such as: (i) the magnitude of the nonobservance of due control; (ii) the amount of money involved in the criminal conduct; (iii) the legal nature and annual volume of the legal entity's business; (iv) the position held by the individual involved in the crime within the structure of the legal entity; (v) the degree of compliance with applicable laws and regulations; and (vi) the public interest of the social and economic consequences or, where appropriate, the damages that may be caused to society by the imposition of the penalty. Under the FCC, legal entities are subject to the following penalties: (i) suspension of activities for a period between six months to 12 years; (ii) closure of premises and establishments for a period between six months to six years; (iii) ban on activities related to the commission of the crime for a period between six months to 12 years; (iv) temporary debarment to participate directly or indirectly in public procurement or entering into public contracts for a period between six months to six years; (v) judicial intervention for a term between six months to six years; and (vi) public reprimand.
What are the available forms of a criminal resolution?	Under Mexican federal laws, there are two forms of alternative resolution available in criminal prosecutions: (1) restitution agreement, which is executed between the offended party and the accused party, and once approved by the Public Prosecutor's Office or the supervisory judge, it extinguishes the criminal action; and (2) conditional discontinuance, which is a statement formulated by the Public Prosecutor's Office or by the accused party containing a detailed plan for the compensation or reparation of damages and submission of the accused party to one or more conditions that ensure an effective protection of the offended party's rights and, if fulfilled, may lead to the dismissal of the criminal action.

	An abbreviated procedure ("plea agreement") is also available if: (i) requested by the Public Prosecutor's Office; (ii) the victim and defendant do not present any opposition; and (iii) the defendant (a) acknowledges that he has been duly informed of his right to an oral trial, (b) expressly renounces this right, (c) consents to the application of the abbreviated procedure, (d) admits his responsibility for the crime imputed to him, and (e) accepts to be sentenced based on the Public Prosecutor Office's means of conviction presented during formulation of the accusation. Regarding the sentence issued in abbreviated procedures, the imposed penalty may not be different or higher than the one requested by the Public Prosecutor's Office and accepted by the defendant. Additionally, the judge must set the amount of compensation in connection with the damages caused. The existence of several co-defendants does not prevent the individual application of these rules.
What are the potential collateral consequences of a corporate criminal conviction?	See above for the applicable penalties and sanctions under Mexican federal laws. Additionally, the offended party may claim civil damages resulting from corporate criminal liability.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. The FCC applies to federal crimes committed in Mexico, as well as to crimes: (i) that produce or are intended to have effects in Mexico; (ii) related to a treaty binding Mexico to the obligation to extradite or prosecute such crimes; (iii) committed in Mexican consulates or against their personnel when they would not have been tried in the country in which they were committed; and (iv) committed abroad and that continue to be committed in Mexico. The FCC applies to crimes committed abroad by a Mexican against Mexicans or foreigners, or by a foreigner against Mexicans, if: (i) the accused is in Mexico; (ii) the accused has not been definitively tried in the country in which the crime was committed; and (iii) the infraction committed has the character of a crime of the country in which it was committed and in Mexico respectively. Under the FCC, crimes committed under the following conditions shall be considered as executed in Mexico: (i) by Mexicans or foreigners on the high seas on board national ships; (ii) executed on board a national warship established in port or in territorial waters of another nation; (iii) executed on board a merchant ship established in port or in territorial waters of another nation if the accused party has not been tried in that nation; (iv) those committed on board a foreign ship in a Mexican port or in Mexican territorial waters if the public tranquility is disturbed or if the accused or the offended were not of the crew; (v) those committed on board a Mexican or foreign aircraft that is in Mexico or in Mexican or foreign atmosphere or territorial waters in cases analogous to those indicated for ships; and (vi) those committed in Mexican embassies and legations.

Can a parent company be criminally liable for the acts of a subsidiary?	No. Corporate criminal liability applies only to the legal entity that committed the criminal offense.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. Under the NCPC, prior to the presentation of oral arguments at trial, a company may benefit from mitigating factors such as cooperating during the investigation and either providing new and relevant information or establishing that it has implemented effective control measures for preventing or identifying future offenses. Another mitigating factor is whether the accused party has compensated the offended for damages incurred prior to the beginning of the trial.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes. Under the NCPC, if the legal entity can show that prior to the alleged offense, it had implemented an effective compliance program with internal controls, it may mitigate up to one-quarter of the sanctions referenced above.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. The failure to implement a compliance program is not itself a crime. However, the NCPC provides that a legal entity may be held criminally liable "when it has been determined that an inobservance of due control in their organization has occurred."
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Mexico is a party to international treaties signed with 31 countries that provide for legal assistance and cross-border cooperation. If no treaty exists between Mexico and a foreign country, Mexico will agree to provide assistance to a foreign country on the condition of reciprocity. In addition, the NCPC recognizes Mexico's international commitment to provide the greatest cooperation possible regarding the investigation and prosecution of crimes.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There is no key governmental guidance on prosecuting corporations.

Does the government incentivize corporations to identify individuals?	No.
Does the government have a whistleblower program to incentivize whistleblowers?	Mexico does not have a comprehensive legal framework regarding whistleblowers or whistleblower incentives, although there are certain rules in the NCPC providing incentives to individuals who are willing to provide information for the prosecution of a more serious offense than the one attributed to that individual.
Last Updated	October 21, 2020

UNITED STATES

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes. *[In the United States, corporations may be charged with criminal conduct in state and federal court. This publication focuses on federal criminal prosecution.]*
On what principles or legislation is corporate criminal liability based?	Under the legal principle of *respondeat superior*, a corporation may be held criminally liable for the acts of its officers and employees, so long as they are acting within the scope of employment with the intent, at least in part, to benefit the corporation.
In what circumstances can a corporation be held criminally liable?	Corporations can be held liable for all crimes except for those that cannot be committed by corporations. Statutory bases of corporate criminal liability include: • Federal securities laws (e.g., the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002 ("SOX"), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act")); • Foreign Corrupt Practices Act ("U.S. FCPA") (15 U.S.C. § 78dd-1 *et seq.*); • False Claims Act (31 U.S.C. §§ 3729–3733); • Anti-Kickback Statute (42 U.S.C. § 1320a-7b); • Sherman Act of 1890 (15 § U.S.C. 1 *et seq.*); • Food, Drug, and Cosmetic Act (21 U.S.C. § 301 *et seq.*); • Controlled Substances Act (21 U.S.C. § 801 *et seq.*); and • National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*).
Is there individual liability for corporate criminal offenses?	Yes, there is individual liability for corporate criminal offenses.
What are the primary criminal government enforcement agencies?	The U.S. DOJ prosecutes corporate criminal misconduct, often in conjunction with other regulatory agencies that pursue civil misconduct, such as the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"). The U.S. DOJ further partners with investigative agencies (such as the Federal Bureau of Investigation; the U.S. Postal Service; the Bureau of Alcohol, Tobacco, and Firearms; the Internal Revenue Service; the Department of Health and Human Services; the Secret Service; and the Drug Enforcement Agency) to bring criminal cases.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Corporations may face financial and other consequences as a result of criminal convictions. The relevant statute often provides a maximum monetary penalty, and the United States Sentencing Guidelines ("USSG") further set fine ranges for each offense, based on crime- and offender-specific considerations. The USSG present a complex formula of deriving the "base offense level" and then the "multiplier" that would be

	applied to a fine based on the severity of the conduct and a host of other factors, such as whether the company voluntarily self-disclosed the misconduct or had in place an effective compliance program at the time of the misconduct. Restitution and asset forfeiture may also be ordered. The U.S. DOJ has adopted policies in recent years related to the assessment and payment of penalties. In 2018, it announced the "no-piling on" policy, which directs U.S. DOJ prosecutors to consider penalties paid to other regulators to avoid the disproportionate effect of imposing overlapping penalties by multiple authorities for the same underlying misconduct. In 2019, the U.S. DOJ released guidance on how prosecutors should evaluate requests by corporate defendants for a reduction in fines and penalties based on a stated inability to pay.
What are the available forms of a criminal resolution?	To resolve a corporate criminal action without the risk of going to trial, potential corporate resolution forms include a plea agreement, a DPA, and an NPA. In addition, the U.S. DOJ may decline (publicly or not) to prosecute a corporation at the conclusion of any investigation. The U.S. DOJ has offered guidance on when a declination would be appropriate in a U.S. FCPA matter under the FCPA Corporate Enforcement Policy. This policy incentivizes companies to voluntarily self-disclose, fully cooperate, fully remediate, and pay any applicable disgorgement in exchange for a presumption of a declination absent aggravating circumstances, such as the pervasiveness of the misconduct or involvement by executive management.
What are the potential collateral consequences of a corporate criminal conviction?	Potential collateral consequences of a criminal conviction vary and may include: • Suspension or debarment from participation in federal government contracts, grants, and programs; • Loss of federal security clearances; • Inability to obtain export licenses; • Civil investigations/prosecutions or administrative investigations/actions against the company by other U.S. agencies related to the same subject matter; • Criminal investigations/prosecutions or administrative investigations/actions against the company by non-U.S. agencies related to the same subject matter; • Criminal, civil, or administrative actions against individuals; and • Follow-on private litigation for certain offenses. The potential collateral consequences at issue in a corporate criminal matter depend on a number of factors, including the scope of the conduct and the charged crimes (including whether the crime is a felony or misdemeanor).
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. However, the U.S. Supreme Court placed limits on the extraterritorial application of federal law in *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090 (2016). In that case, the Supreme Court held that, unless Congress has clearly expressed an intent to the contrary, federal laws will be construed to have only domestic application.

Can a parent company be criminally liable for the acts of a subsidiary?	Generally, parent companies are not criminally liable for the acts of their subsidiaries. However, courts in the United States have imposed criminal liability on a parent company when the parent participated in the subsidiary's misconduct, when the subsidiary acted as the parent's agent, or under the veil-piercing theory that the parent used the subsidiary for a wrongful purpose.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	Generally, self-reporting is not required but is incentivized, as described below. Self-reporting of criminal misconduct, however, may be required as a result of a company's obligations under certain laws, such as the U.S. Bank Secrecy Act of 1970, U.S. anti-money laundering regulations, and the Anti-Kickback Enforcement Act, or under pre-existing agreements with the U.S. government.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. Under the Justice Manual, prosecutors may consider a corporation's timely and voluntary self-disclosure, cooperation, and remediation as mitigating factors in connection with any charging decision. The same factors are considered as mitigating factors when calculating a corporation's fine under the USSG.
Is the implementation of a corporate compliance program a defense to criminal liability?	No. The existence of an effective compliance program is not sufficient, in and of itself, to justify not charging a corporation for criminal misconduct. In addition, the nature of some crimes may be such that law enforcement policies mandate prosecution notwithstanding the existence of a compliance program. That said, the adequacy and effectiveness of the corporation's compliance program at the time of the offense, as well as at the time of a charging decision, is a mitigating factor prosecutors may consider when charging a corporation. The U.S. DOJ issued updated guidance in April 2019—the Evaluation of Corporate Compliance Programs—to "assist prosecutors in making informed decisions as to whether, and to what extent, [a] corporation's compliance program was effective at the time of the offense, and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate (1) form of any resolution or prosecution; (2) monetary penalty, if any; and (3) compliance obligations contained in any corporate criminal resolution (e.g., monitorship or reporting obligations)."
Is failure to implement a corporate compliance program a basis for criminal liability?	No. Failure to implement a compliance program is not an independent offense. As noted above, however, the presence and nature of a company's compliance program often does feature prominently in prosecutors' decisions whether and how to charge a corporation with criminal conduct. The failure to implement a program can also increase a company's fine calculation under the USSG.

COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. The United States has extradition treaties with more than 100 countries (although it is not a signatory to the Rome Statute of the International Criminal Court). On this end, the Office of International Affairs—which is the U.S. DOJ's "nerve center for international criminal law enforcement coordination"—has five main objectives: extradition and removal of fugitives, transfer of sentenced persons, international evidence gathering, providing legal advice to U.S. DOJ leadership and prosecutors, and international relations and treaty matters. Of note, some of the U.S. DOJ's largest corporate criminal settlements entered into over the past several years under the U.S. FCPA have involved substantial cooperation between the United States and other jurisdictions. In 2019 alone, the U.S. DOJ and the SEC noted assistance from 26 countries and territories in 10 corporate U.S. FCPA enforcement actions.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The U.S. DOJ sets out its guidance on prosecuting corporations in section 9-28.000 of the Justice Manual. The guidance sets out 10 factors to be considered, such as the nature and seriousness of the offense, when "reaching a decision as to the proper treatment of a corporate target." The USSG also provides sentencing principles for organizations found liable for criminal conduct. There are also U.S. DOJ enforcement policies focused on particular criminal statutes, such as the U.S. FCPA.
Does the government incentivize corporations to identify individuals?	Yes. In order for a company to receive any consideration for cooperation under section 9-28.700 of the Justice Manual, the company must identify individuals substantially involved in or responsible for the misconduct at issue, regardless of their position, status, or seniority, and provide all relevant facts relating to that misconduct.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. A number of federal statutes provide financial incentives for whistleblowers to report issues directly to the government. The Dodd-Frank Act created the SEC's and the CFTC's respective whistleblower programs, pursuant to which a whistleblower who meets certain conditions may receive an award of up to 30% of the total monetary remedies assessed by the SEC or CFTC. Whistleblowers may also be rewarded for reporting tax law violations to the Internal Revenue Service. Whistleblowers (or "relators") who bring *qui tam* lawsuits under the False Claims Act may also reap a financial benefit—up to 30% of the resolution. These whistleblowers often simultaneously report to the U.S. DOJ. In addition to offering financial incentives, the Dodd-Frank Act also protects whistleblowers from retaliation in connection with their report and provides them with a private cause of action in the event they are discharged or discriminated against by their employers. Moreover, the United States Department of Labor's Occupational Safety and Health Administration operates a Whistleblower Protection Program, which enforces the whistleblower provisions of more than 20 federal statutes. Many of these statutes require backpay and reinstatement, and some allow for punitive damages.
Last Updated	December 8, 2020

SOUTH AMERICA

ARGENTINA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability in Argentina is based on the following statutes: • Law No. 27,401/2017 (Corporate Criminal Liability); • Law No. 25,156/1999 (Antitrust); • Law No. 24,769/1996 (Tax Evasion Law); • Law No. 22,415/1981 (National Customs Code); • Law No. 20,680/1974 (Supplying Law); • Law No. 19,359/1971 (Currency Exchange Crimes Law); and • National Criminal Code (Section on Crimes Against the Economic Order and Finances).
In what circumstances can a corporation be held criminally liable?	Corporations can be held criminally liable for the following offenses: • Paying bribes or influencing public officials to secure contracts or benefits with the public sector (Law No. 27,401/2017); • Contraband (National Customs Code); • Fraudulent tax evasion (Law No. 27,409/2017); • Willingly failing to supply necessary goods to the market, to affect the population, or to distort prices (Supply Law No. 20,680/1974 and Commercial Loyalty Decree No. 274/2019); • Failing to return to the country foreign currency received in connection with the export of goods, according to prescribed deadlines (Currency Exchange Crimes Law No. 19,359/1971); • Concentrating services or products with the purpose of controlling the market (i.e., an antitrust violation) (Antitrust Law No. 27,442/2018); and • Money laundering (i.e., converting, transferring, managing, selling, encumbering, disguising, or otherwise putting into circulation in the market goods obtained through a criminal act) (National Criminal Code, Title XIII). Under Law No. 27,401/2017, criminal liability attaches to the lead entity even when the person committing the offense lacked the authority to act on behalf of the entity, as long as the relevant management ratified his or her conduct.
Is there individual liability for corporate criminal offenses?	Yes. Individuals may be held criminally liable for corporate offenses. However, the legal entity will not be held liable if the individual who committed the crime acted solely for his or her exclusive benefit, and without generating any benefit for the legal entity.
What are the primary criminal government enforcement agencies?	The primary criminal government enforcement agencies in Argentina are: • Federal Prosecutors' Office ("*Procuradoría General de la Nación*"); • Provincial Prosecutors' offices; • Federal Police; • Gendarmerie ("*Gendarmería Nacional*");

	• Provincial Police; • Anticorruption Office; • Argentinean Tax Authority; • Argentinean Central Bank; • Economic Crime and Money Laundering Prosecution's Office; • Financial Investigation Unit; • General Directorate for Economic and Financial Advice in Investigations; and • Argentinian Exchange Commission.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	The extent of criminal penalties varies depending on the type of offense committed by the legal entity. Generally, the following sanctions may apply jointly or separately: • A fine of two to five times the undue benefit obtained or that could have been obtained; • Total or partial suspension of activities, which in no case may exceed 10 years; • Suspension from participating in state bids or tenders for public works or services or in any other activity related to the state, which in no case may exceed 10 years; • Dissolution and liquidation of the legal entity when it was created for the sole purpose of committing the crime, or criminal acts constitute the main activity of the entity; • Loss or suspension of state benefits; and • Publication of a summary of the conviction at the expense of the legal entity. For criminal offenses related to Law No. 19,359/1971, fines may be up to 10 times the amount involved in the illegal currency exchange transaction.
What are the available forms of a criminal resolution?	Legal entities may be subject to corporate probation when they enter into a plea agreement with the Prosecutors' Office. A legal entity may enter into a plea agreement as long as it cooperates with the authorities and the agreement meets the following conditions: • Payment of a fine equivalent to half of the minimum amount provided for in Article 7, (1), of Law No. 27,401/2017; • Disgorgement of ill-gotten gains; and • Return to the government of any assets that would presumably be confiscated in the event of a conviction. Additionally, the plea agreement may impose other sanctions and make different requests to legal entities depending on the circumstances, such as: • Take all necessary steps to repair the damage caused by the wrongful act; • Provide community services; • Apply disciplinary measures against involved employees; and • Implement a compliance program pursuant to Articles 22 and 23 of Law No. 27,401/2017, or improve or modify a preexisting program. Importantly, in certain circumstances, the existence of a compliance program will be a mandatory condition to entering into public contracts with the federal government.

What are the potential collateral consequences of a corporate criminal conviction?	For legal entities involved with public contracts or in other relationships with the government, potential collateral consequences include: • Debarment from contracting with the government for a certain period; • Debarment from the Commercial Public Registry; • Suspension of the tax identification number (which results in the impossibility of doing business); and • Reputational issues with financial institutions (e.g., commercial banks).
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. The National Criminal Code applies to the following situations: • Crimes committed or whose effects occur in Argentinean territory or places subject to Argentinean jurisdiction; • Crimes committed abroad by officials or employees of Argentinean authorities while performing their duties; and • Crimes provided for in Article 258 bis of the National Criminal Code (i.e., bribes to public officials), when committed abroad by Argentinean citizens or legal entities (or their secondary branches) with domicile in Argentina.
Can a parent company be criminally liable for the acts of a subsidiary?	Yes, when the crime under investigation is committed in the interest or to the benefit of the parent company, regardless of the parent company's direct participation in the criminal activity.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. If a corporation self-reports, sanctions can be reduced. Additionally, under Law No. 27,401/2017, a legal entity may be fully exempted from liability as long as it: (i) detects and reports the crime as a result of its own internal investigation; (ii) demonstrates that an adequate compliance program existed prior to the prohibited conduct, which meets the requirements for such programs set forth by this law; and (iii) disgorges the improper benefits obtained from the commission of the crime.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes, if the corporate compliance program is considered effective by the relevant law enforcement authority. The following requirements are taken into consideration when evaluating whether a compliance program is effective for the purposes of Law No. 27,401/2017: • Whether there is a Code of Ethics or Code of Conduct, or integrity policies and procedures, applicable to all company employees regardless of their position or function, to guide the planning and execution of their tasks in such a way as to prevent the commission of crimes governed by the law;

	• Whether there are specific rules and procedures to prevent criminal conduct while participating in public bids and procurement processes, performing public contracts, or interacting with the public sector; and • Whether there is periodic training on the compliance program for directors, managers, and employees. The compliance program may also contain the following elements: • Ongoing risk analysis and adaptation of the compliance program accordingly; • Visible and unequivocal support to the compliance program by senior management; • Widely disclosed internal reporting channels open to third parties; • Whistleblower protection policy; • Policies on internal investigations and effective sanctions for violations of the Code of Ethics or Code of Conduct; • Procedures to monitor the integrity and track record of third parties or business partners (i.e., suppliers, distributors, service providers, agents, and intermediaries); • Due diligence for corporate transformation and acquisitions to identify irregularities, illegal acts, or existence of vulnerabilities in the legal entities involved in the transaction; • Ongoing monitoring and evaluation of the effectiveness of the compliance program; • An internal manager in charge of developing, coordinating, and supervising the compliance program; and • Compliance with regulatory requirements related to the company's activities.
Is failure to implement a corporate compliance program a basis for criminal liability?	No.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Argentina is a party to several bilateral agreements for mutual legal assistance on criminal matters, such as: • OECD Convention; • United Nation Convention against Corruption; • Agreement for the Disposition of Confiscated Property of Transnational Organized Crime; • Bilateral Framework Agreement on the Disposition of Confiscated Assets with Uruguay; • Convention against Transnational Organized Crime; • European Union's Judicial Cooperation Unit; • Asset Recovery Network of the Financial Action Group of Latin America; • CARIN Network (Camden Assets Recovery Interagency Network), which includes most of the countries in Europe, as well as the United States and others; • ARIN-AP Network, which includes countries from the Asia Pacific region;

	• ARINSA, ARINWA, and ARI-EA Networks, which include countries of the regions from the South, West, and East Africa; and the • Latin American and Caribbean Law Enforcement Network.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The Argentinian law enforcement authorities have not issued specific guidance on the prosecution of corporations. Notably, until the enactment of Law No. 27,401/2017, the focus of Argentinian law enforcement authorities was on prosecuting individuals, not corporations.
Does the government incentivize corporations to identify individuals?	Yes. Under Law No. 27,401/2017, a corporate cooperation agreement must identify individuals involved in the criminal offense to be considered effective.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. Law No. 27,304/2016 allows the reduction of penalties for individuals who participated in a crime if they provide information that helps in the investigation of crimes such as drug trafficking, human trafficking, and corruption.
Last Updated	November 16, 2020

BRAZIL

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability is based on the Brazilian Federal Constitution and Federal Law No. 9,605/1998 ("Environmental Offenses Act").
In what circumstances can a corporation be held criminally liable?	A corporation can be held criminally liable only in connection with environmental crimes. Article 3 of the Environmental Offenses Act establishes the following requirements to hold a corporation criminally liable: • The criminal offense must be defined by the Environmental Offenses Act; • The criminal offense must result from a decision taken by a corporate governance body or legal representative; and • The decision must have been taken in the interest of, or to benefit, the legal entity. Although not a criminal statute, corporations are also subject to Brazil's Clean Company Act. Under this federal law, domestic and international companies with a presence in Brazil who engage in bribery of public officials within Brazil or abroad may be subject to civil and administrative liability. In addition, third parties who aid, abet, or conceal bribery acts perpetrated by companies are individually liable. The Clean Company Act also allows for the piercing of the corporate veil to reach its officers and shareholders with management roles whenever the legal entity is used to facilitate, conceal, or disguise bribery. Successor liability can also apply.
Is there individual liability for corporate criminal offenses?	Yes. Under the Environmental Offenses Act, any individual—including legal or contractual representatives of a legal entity—may be held criminally liable if that individual was aware of the criminal conduct of others but failed to take action to prevent the crime when there was an opportunity to do so. Additionally, in 2013, the Brazilian Supreme Court held that corporations can be criminally liable for violations of the Environmental Offenses Act independently of the simultaneous indictment of an individual.
What are the primary criminal government enforcement agencies?	At the federal level, the primary criminal government enforcement agencies are the Federal Police ("*Polícia Federal*") and the Federal Prosecutors' Office ("*Ministério Público Federal*"). At the state level, criminal laws are enforced by the State Police ("*Polícia Judiciária*") and the Public Prosecutors' Office ("*Ministério Público Estadual*") of each state.
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	The following fines, penalties, and sanctions may apply under the Environmental Offenses Act: • Monetary fines;

	• Community service (such as financing environmental projects, recovering damaged areas, funding the maintenance of public spaces, or donating to public environmental or cultural entities); and • Restriction of rights, which may include the: (i) partial/complete suspension of activities; (ii) temporary shutdown of activities; or (iii) debarment, for up to 10 years, from participating in government contracts and from receiving government tax incentives, grants, or donations. The application of these sanctions may take certain factors into consideration, such as the severity of the crime, recidivism, and for monetary fines, the economic situation of the corporation. Under the Clean Company Act, administrative fines range from 0.1% to 20% of the responsible company's prior year's gross revenue. If, however, authorities are unable to assess the gross revenues from the prior year, an alternative fine applies. These fines can never be lower than the benefit obtained by the responsible company. Furthermore, the administrative sanctions levied against the responsible company may be published publicly. The Clean Company Act also provides for severe judicial penalties for responsible companies, which include disgorgement of benefits obtained by the illegal act, suspension or partial interruption of the company's activities, and dissolution of the legal entity. Companies may also be banned from receiving government assistance in the form of subsidies, grants, donations, or loans for a period ranging from one to five years.
What are the available forms of a criminal resolution?	Most environmental crimes are considered minor offenses in Brazil and can be subject to negotiated resolutions without a guilty plea. If an individual is prosecuted for other crimes connected to corporate activity (such as corruption or antitrust violations), the corporation can enter into leniency agreements with the appropriate administrative bodies or public prosecutors to help avoid and/or reduce the individual's civil, criminal, and administrative penalties, as well as the corporation's civil and administrative penalties.
What are the potential collateral consequences of a corporate criminal conviction?	See discussion above regarding "What is the scope of potential fines, penalties, and sanctions?" In general, with the exception of administrative fines and civil damages, there are limited collateral consequences arising out of a criminal conviction of a corporation for environmental crimes in Brazil.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes, provided that these offenses can also be prosecuted under Brazilian law. However, it does not appear that the Environmental Offenses Act has ever been applied to this extent.

Can a parent company be criminally liable for the acts of a subsidiary?	Yes, if the crime was committed as a result of a decision by a corporate governance body or legal representative of the subsidiary in the interest or to the benefit of the parent company. Importantly, the Environmental Offenses Act allows the piercing of the corporate veil if necessary to collect monetary damages awarded under the Environmental Offenses Act.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No.
Is credit offered for self-reporting, cooperation, or remediation?	Brazilian law explicitly offers credit to individuals for self-reporting, cooperation, or remediation only—but there is nothing in Brazilian law to prohibit corporations from also receiving credit under those laws. However, in a corporate context, these remedies are mostly relevant for resolving civil and administrative claims—such as violations of the Clean Company Act, which expressly allows corporations to enter into leniency agreements.
Is the implementation of a corporate compliance program a defense to criminal liability?	Perhaps. Although the Environmental Offenses Act does not reference corporate compliance programs, such programs could be used as a potential defense if a corporation is charged with "omission" crimes under the Environmental Offenses Act.
Is failure to implement a corporate compliance program a basis for criminal liability?	No. However, the failure to implement a corporate compliance program is often used as an additional argument by law enforcement authorities to hold both individuals (in white-collar crime cases generally) and corporations (in environmental crime cases specifically) liable for "omission" crimes.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Brazil is a party to several multilateral and bilateral agreements for mutual legal assistance on criminal matters. Additionally, several of the U.S. DOJ's largest global anticorruption settlements in history have involved close coordination between U.S. and Brazilian law enforcement authorities. Notably, the FCPA Unit of the U.S. DOJ and the U.S. Securities and Exchange Commission have also hosted large training sessions for Brazilian law enforcement authorities in Brazil.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	Brazil has not published guidance governing the prosecution of corporations.

Does the government incentivize corporations to identify individuals?	Yes. In practice, it is common for individuals to enter into leniency agreements alongside the corporation after internal investigations. Very often, these agreements are combined with a plea agreement for individuals.
Does the government have a whistleblower program to incentivize whistleblowers?	Yes. In 2019, Law No. 13,964/19 created the Brazilian whistleblower program. This law requires the government to create "Ombudsman" units in all levels (federal, state, and municipal) to ensure that citizens can report criminal activity. If a complaint leads to a conviction, the whistleblower will be granted anonymity, full protection against retaliation, and immunity against civil/criminal liability—except if the whistleblower knowingly presented false information or evidence. The whistleblower is also entitled to receive a 5% reward if the complaint results in the recovery of criminal proceeds.
Last Updated	November 20, 2020

CHILE

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability in Chile is based on Law No. 20,393/2009. Under Law No. 20,393/2009, a legal entity may be held criminally liable for actions of its senior executives, managers, board members, controllers, owners, and agents acting under the legal entity's direct supervision, if: • The criminal offense was committed "directly and immediately" in the interest or to the benefit of the legal entity; and • The crime is a consequence of the legal entity's failure to establish an effective compliance program aimed at fulfilling the legal entity's directive and oversight duties.
In what circumstances can a corporation be held criminally liable?	Corporate criminal liability under Law No. 20,393/2009 applies to the following criminal offenses: • Bribery; • Money laundering; • Terrorism financing; • Possession of stolen goods; • Private corruption; • Breach of trust; • Misappropriation; • Conflict of interest; • Embezzlement; and • Crimes concerning contamination of water resources (as per the General Fishing and Aquaculture Law).
Is there individual liability for corporate criminal offenses?	Yes. Individual criminal liability applies under the general rule governing criminal liability for individuals under the Chilean Criminal Procedure Code. Notably, Law No. 20,393/2009 states that legal entities will not be held criminally liable if individuals committed the crimes for their own benefit.
What are the primary criminal government enforcement agencies?	The only law enforcement agency authorized to investigate corporate criminal liability is the Public Prosecutors' Office ("*Fiscalía de Chile*"). That said, in the course of investigations, Chilean prosecutors may be assisted by the Criminal Investigation Police ("*Policía de Investigaciones de Chile*") and the Chilean Police Force ("*Carabineros de Chile*").

FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	Law No. 20,393/2009 contemplates several sanctions that may apply depending on the crime committed by the legal entity: • Temporary (or perpetual) debarment from entering into agreements with governmental entities; • Partial (or total) loss of tax benefits, or absolute ban on receiving such benefits for a period of time; • Monetary fines of up to 300,000 monthly tax units (equivalent to approximately US$18 million); and • Dissolution of the legal entity.
What are the available forms of a criminal resolution?	The following forms of criminal resolutions are available in Chile: • **Conditional Suspension of Proceedings** (similar to a DPA): Law No. 20,393/2009 allows the suspension of a judgment only when there is no prior conviction, or another suspended sentence in effect; and • **Expedited Procedure** (similar to a plea agreement): This procedure is designed for offenses where: (i) the penalty falls below certain limits established by the law, and (ii) there is acceptance of the facts by the company under investigation (without a guilty plea).
What are the potential collateral consequences of a corporate criminal conviction?	Law No. 20,393/2009 establishes the following collateral consequences: • Publication of the criminal judgment in newspapers, with information regarding the conviction; • Forfeiture of the criminal proceeds and other related property, and—if the ill-gotten gains or property are not enough—forfeiture of an equivalent amount in equivalent cash; and • Accessory penalty equivalent to the amount of investments made with ill-gotten gains.
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	Yes. The following crimes committed outside of Chile may give rise to corporate criminal liability: • Bribery committed by national public officials, or bribery of a foreign public official committed by a Chilean national or permanent resident; • Crimes committed by a Chilean citizen against another Chilean citizen if the guilty party comes back to Chile without being judged by the authority of the country where the offense was committed; and • Crimes included in treaties entered into by and between Chile and other countries. Additionally, when any part of the criminal conduct occurs in Chilean territory, corporate criminal liability may arise. If the offenses contemplated in Law No. 20,393/2009 were initiated on Chilean soil, even when all the effects are produced internationally, the Chilean authorities would have jurisdiction over the case.

Can a parent company be criminally liable for the acts of a subsidiary?	If the subsidiary is incorporated under Chilean law, there is no liability for the parent company. However, Law No. 20,393/2009 provides for successor liability. In the case of transformation, merger, division, or dissolution of the legal entity responsible for one or more of the crimes contemplated by Law No. 20,393/2009, criminal liability is transmitted to the surviving legal entity.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	No.
Is credit offered for self-reporting, cooperation, or remediation?	Under Law No. 20,393/2009, the following circumstances may mitigate criminal liability: • Repairing the damage that has been caused (or preventing further negative consequences from the criminal act); • Substantially cooperating with the investigation, when, at any stage of the investigation, a legal representative self-reports or provides any information to the authorities before knowing that there is a court proceeding against the company; and • Implementing effective measures to prevent similar criminal offenses to those that are under investigation.
Is the implementation of a corporate compliance program a defense to criminal liability?	Yes. An effective organizational and administrative model or compliance program aimed at deterring criminal conduct, particularly focused on fulfilling the directive and oversight duties required under Law No. 20,393/2009, may exempt a company from any criminal liability.
Is failure to implement a corporate compliance program a basis for criminal liability?	Yes. Failure to implement a corporate compliance program is considered a breach of the directive and oversight duties under Law No. 20,393.
COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	Yes. Chile is a member state of the OECD. Chile is also a signatory party to the OECD Convention and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. In its "Chile Phase 4 Report" of 2019, the OECD Working Group on Bribery specifically recommended that in issues concerning mutual legal assistance ("MLA") and extradition in foreign bribery cases, Chile should:

	• Continue to be proactive when following up on outstanding MLA requests, including by routinely contacting foreign authorities through informal channels and the working group; • Provide training to prosecutors on seeking MLA in foreign bribery cases; • Take all necessary measures to ensure that it will not deny MLA in foreign bribery cases on grounds of bank secrecy; and • Take steps to reduce the time that the PPO takes to execute incoming MLA requests, especially when financial information is sought. Other conventions or bilateral agreements related to corporate criminal matters that Chile has entered into are: the United Nations Convention against Corruption, the National Procedures on Judicial Cooperation in the Criminal Field (PC-OC – Council of Europe), the Inter-American Convention against Corruption (Organization of American States or "OAS"), the Inter-American Convention on Mutual Assistance in Criminal Matters (OAS), and the International Convention to Suppress the Financing of Terrorism (UN).
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	There is no government guidance on prosecuting corporations. In practice, the main guideline adopted by the Prosecutor's Office when investigating corporations is to first determine the existence of a crime prevention program and its effectiveness within the company. The Prosecutor's Office has also developed certain questionnaires used to determine the effectiveness of compliance programs, and prosecutors interrogate compliance officers before any other staff member. It is also worth noting that Chile has a particular investigations system for money laundering carried out by the Financial Analysis Unit. This agency can impose administrative sanctions and often acts as a supporting agency for the Prosecutor's Office. The Financial Analysis Unit has specific guidelines regarding the investigation of suspicious money-laundering transactions.
Does the government incentivize corporations to identify individuals?	No.
Does the government have a whistleblower program to incentivize whistleblowers?	No.
Last Updated	November 16, 2020

VENEZUELA

CRIMINAL LIABILITY GENERALLY	
Is there corporate criminal liability?	Yes.
On what principles or legislation is corporate criminal liability based?	Corporate criminal liability is based on—and limited to conduct described in—the following statutes: • Anti-Drug Trafficking Law ("*Ley Orgánica de Drogas*"); • Organized Crime and Terrorism Financing Law ("*Ley Orgánica contra la Delincuencia Organizada y Financiamiento al Terrorismo*"); • Fair Prices Law ("*Ley Orgánica de Precios Justos*"); • Environmental Crimes Law ("*Ley Penal del Ambiente*"); and • Law on Informatics Crimes ("*Ley Especial Contra los Delitos Informáticos*").
In what circumstances can a corporation be held criminally liable?	Depending on the nature of the criminal offense, a corporation may be held criminally liable for acts of their employees, legal representatives, and even shareholders. Some of the general requirements to hold a corporation criminally liable under Venezuelan law include: • The criminal offense must be committed by an individual acting within the scope of his or her corporate duties or responsibilities; • The individual acted using corporate assets; and • The criminal offense was committed to the benefit of the corporation or its shareholders. Additionally, under the Environmental Crimes Law, a corporation may be held liable for the acts of managers or directors if they were acting on behalf of the corporation.
Is there individual liability for corporate criminal offenses?	Yes. When an individual commits a criminal offense while acting within the scope of his or her corporate duties or responsibilities, both the individual and the corporation may be held criminally liable. Under general rules of criminal liability (subject to limitations based on the elements of each offense), the prosecution must prove that an individual acted with criminal intent and knowledge to be held criminally liable.
What are the primary criminal government enforcement agencies?	The primary criminal government enforcement agency is the National Prosecutor's Office ("*Fiscalía General de la República*").
FORM OF RESOLUTION AND POTENTIAL SANCTIONS	
What is the scope of potential fines, penalties, and sanctions?	The scope of fines, penalties, and sanctions may vary depending on the nature and seriousness of the criminal offense. Generally, fines, penalties, and sanctions include: • Seizure of corporate assets; • Fines of up to five times the financial value of the underlying offense; • Temporary or permanent closure of the corporation; and • Temporary or permanent revocation of the corporation's license to operate.

What are the available forms of a criminal resolution?	The available forms of criminal resolution depend on the seriousness and nature of the criminal offense. Criminal resolutions may include DPAs, compensation, or restitution agreements. Prosecutors may also commence an investigation and dismiss the matter if no evidence is found to warrant further prosecution.
What are the potential collateral consequences of a corporate criminal conviction?	Corporations may be subject to certain accessory penalties. Depending on the criminal offense, accessory penalties may include civil damages, potential termination of public contracts, and publication of the conviction in the country's newspapers with nationwide circulation..
EXTENSION OF LIABILITY	
Is there corporate criminal liability within the country for crimes committed outside of the country?	No.
Can a parent company be criminally liable for the acts of a subsidiary?	No.
SELF-REPORTING, COOPERATION, COMPLIANCE, AND REMEDIATION	
Is self-reporting of a corporate criminal act ever required?	There is no general duty to self-report under Venezuelan law. However, all specially regulated entities (that is, entities that must have a license to operate and are under the purview of a regulatory agency) must self-report.
Is credit offered for self-reporting, cooperation, or remediation?	Yes. Although not regulated by Venezuelan law, cooperation and self-reporting may be considered a mitigating factor in sentencing by a sentencing judge.
Is the implementation of a corporate compliance program a defense to criminal liability?	The implementation of a corporate compliance program is not a defense under Venezuelan law except for criminal offenses related to money laundering.
Is failure to implement a corporate compliance program a basis for criminal liability?	Yes, but only for criminal offenses related to money laundering. The failure to implement a corporate compliance program is one of the elements of money-laundering offenses.

COOPERATION WITH FOREIGN AUTHORITIES	
Is the country known to cooperate with other foreign government authorities in corporate criminal matters?	No. Venezuela has been highly criticized by various governments and international organizations for its lack of cooperation across criminal matters.
GOVERNMENT PROGRAMS AND GUIDANCE	
What is the key government guidance on prosecuting corporations, if any?	The Venezuelan government has not issued guidance on prosecuting corporations.
Does the government incentivize corporations to identify individuals?	No.
Does the government have a whistleblower program to incentivize whistleblowers?	No.
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