
Global Anti-Bribery Year-in-Review: 2023 Developments and Predictions for 2024

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I. 2023 ENFORCEMENT TRENDS AND KEY DEVELOPMENTS

A. Introduction

Publicly announced Foreign Corrupt Practices Act (FCPA) enforcement activity in 2023 did not return to the levels seen a few years ago, as indicated by both the total number of cases against corporate and individual defendants and the combined total of monetary penalties. Nonetheless, senior officials at the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) again signaled that anti-corruption enforcement is a priority and that there will be significant and growing enforcement efforts going forward.¹ Below are six key takeaways regarding FCPA enforcement in 2023:

1. **Updated Enforcement and Compliance Guidance.** The DOJ continued to provide further detail and clarification regarding its approach to corporate enforcement. Recent key guidance indicates: (1) ongoing DOJ efforts to incentivize voluntary self-disclosure, cooperation, and remediation; (2) sustained focus on corporate compliance programs and the heightened standards that the DOJ is applying when reviewing such programs; and (3) increased leniency that can be obtained from “extraordinary” cooperation and remediation.
2. **New Pilot Program on Compensation Incentives and Clawbacks.** The DOJ released a new pilot program aimed at incentivizing compliance-driven compensation by (1) requiring companies entering into corporate resolutions involving the DOJ Criminal Division to develop compliance-promoting criteria within their compensation and bonus systems; and (2) providing for reduced fines for companies that seek to clawback corporate compensation from wrongdoers.

¹ In fact, as of the publication of this alert in January, the SEC already had announced a 2024 enforcement action. Order Instituting Cease-and-Desist Proceedings, *In the Matter of SAP SE*, Rel. No. 99308, File No. 3-21824 (Jan. 10, 2024), <https://www.sec.gov/files/litigation/admin/2024/34-99308.pdf>; U.S. Securities and Exchange Commission Press Release No. 2024-4: SEC Charges Global Software Company SAP for FCPA Violations (Jan. 10, 2024), <https://www.sec.gov/news/press-release/2024-4>.

3. **M&A Safe Harbor Policy.** The DOJ announced a safe harbor policy for mergers and acquisitions that will shield acquiring companies from criminal prosecution for misconduct that they uncover at a target company and both (1) report within six months of the acquisition; and (2) fully remediate within 12 months of the acquisition.
4. **Comparatively Higher SEC Enforcement Activity Against Companies.** The SEC has continued to prioritize investigating and resolving corporate FCPA matters, again announcing more corporate settlements than the DOJ. Notably, the SEC has not brought any FCPA charges against individuals during the past two years.
5. **Continued Emphasis on Data Preservation, Collection, and Review.** The DOJ and SEC again reiterated the importance of corporate efforts and controls related to data preservation, collection, and review—including ensuring appropriate preservation and access to business-related electronic data and communications—particularly when assessing the extent of a company’s cooperation with U.S. authorities.²
6. **Enactment of the Foreign Extortion Prevention Act (FEPA).** On December 23, President Biden signed the bipartisan FEPA, making it a crime for foreign officials to corruptly solicit or receive a bribe when certain jurisdictional touchpoints exist. The FEPA addresses the “demand side” of foreign bribery, which is not covered by the FCPA’s anti-bribery provisions and has typically been prosecuted using the money laundering statutes.

B. 2023 Enforcement Trends and Priorities

1. Level of Enforcement Activity in 2023

Although publicly announced FCPA enforcement activity remains lower than the levels reached a few years ago, 2023 saw an increase in the overall number of FCPA enforcement actions and the number of *corporate* enforcement actions compared to 2022. Despite a modest increase in the total number of enforcement actions, from 26 in 2022 to

² Kenneth A. Polite Jr., Assistant Att’y Gen. of the Criminal Division, DOJ, Keynote at the ABA’s 38th Annual National Institute on White Collar Crime (Mar. 3, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-aba-s-38th-annual-national> (announcing revisions to the Evaluation of Corporate Compliance Programs related to the use of personal devices, communications platforms, and ephemeral messaging); Kenneth A. Polite Jr., Assistant Att’y Gen., DOJ, Keynote Address at the Global Investigations Review Live: DC Spring Conference (Mar. 23, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-address-global> (noting that voluntarily making foreign-based employees available for interviews in the United States, producing relevant documents located outside the U.S., and assisting with analysis and translations of voluminous evidence is “extraordinary’ cooperation”); Gurbir S. Grewal, Director of the Division of Enforcement, SEC, Remarks at New York City Bar Association Compliance Institute (Oct. 24, 2023), <https://www.sec.gov/news/speech/grewal-remarks-nyc-bar-association-compliance-institute-102423> (noting “charges against 40 firms and over \$1.5 billion in civil penalties for failures to maintain and preserve electronic communications” since December 2021).

27 in 2023,³ there was a larger increase in corporate resolutions, from 12 in 2022 to 15 in 2023.⁴ Two of the corporate defendants were parties to parallel settlements with both the DOJ and SEC, resulting in six DOJ and nine SEC corporate resolutions. There has also been a steady increase in the number of actions against U.S.-based companies in recent years, from none in 2021, to three in 2022, to five in 2023.⁵ One of the 2023 corporate resolutions involved a breach of an existing corporate resolution⁶ and another involved a recidivist corporate defendant that had previously resolved an FCPA matter,⁷ bringing the total number of companies that have settled more than one FCPA-related matter to 23.

The number of public individual FCPA enforcement actions continued to decline in 2023 for the fourth year in a row, from 50 in 2019, to 31 (2020), 17 (2021), 13 (2022), and to 12 in 2023. All 12 individuals were charged by the DOJ in 2023, and as noted above, the SEC did not bring any individual enforcement actions.

³ We recognize that other commentators may present slightly different numbers depending on their methodology. To determine the number of corporate enforcement actions for the year, we counted enforcement actions brought by the SEC and the DOJ separately (e.g., parallel settlements with the same entity by the SEC and the DOJ count as two actions). However, actions brought by a single agency against related corporate entities (e.g., a parent and subsidiary) for the same core conduct count as only one action. Declinations and case closures are not included within this metric.

To determine the number of enforcement actions against individuals for the year, we counted charges against individuals in the year they were filed, not the year they were announced (i.e., criminal charges unsealed at a later date are included in the count for the year they were originally filed). As a result, the numbers reported for previous years in this alert are updated and therefore may be different from prior reports. In addition to charges alleging violations of the substantive FCPA provisions, we also included non-FCPA charges for which the allegations relate to bribery schemes. These non-FCPA charges included, but are not limited to, conspiracy to violate the FCPA, money laundering, and conspiracy to commit money laundering.

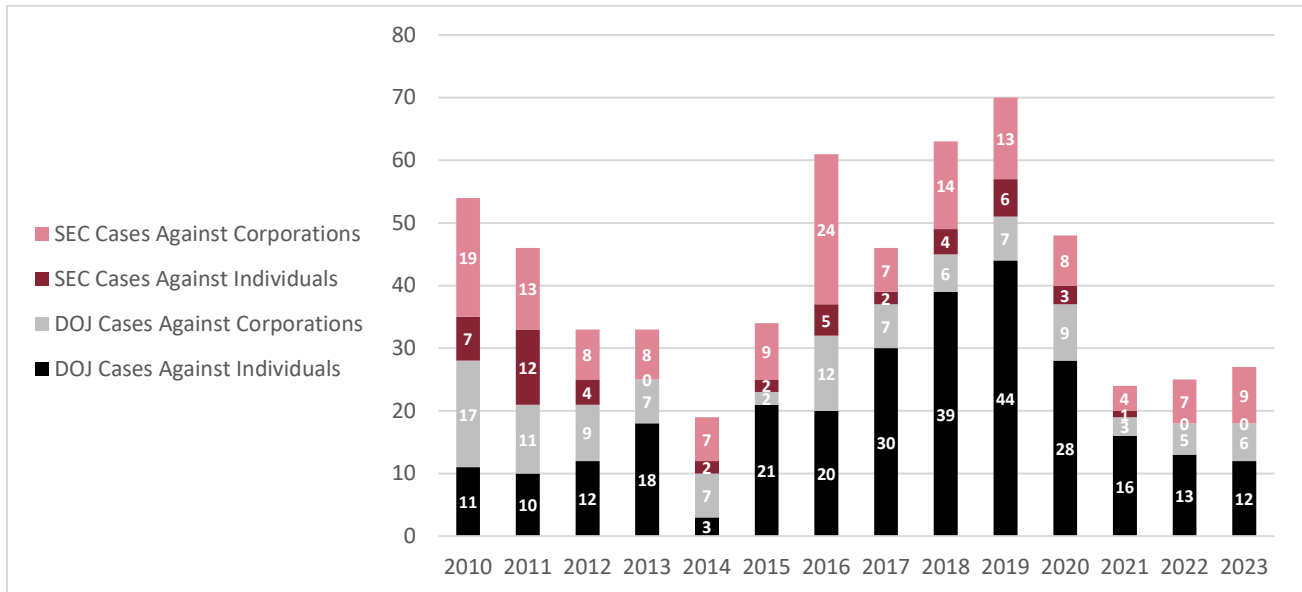
⁴ See WilmerHale, *2022 Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>.

⁵ See WilmerHale, *2022 Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>; U.S. Department of Justice Press Release No. 23-1072: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>; U.S. Securities and Exchange Commission Press Release No. 2023-209: Albemarle Corp. to Pay SEC More Than \$103 Million to Settle FCPA Violations (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-209>; U.S. Securities and Exchange Commission Press Release No. 2023-206: SEC Charges Clear Channel Outdoor with FCPA Violations Relating to China Subsidiary (Sept. 28, 2023), <https://www.sec.gov/news/press-release/2023-206>; U.S. Securities and Exchange Commission Press Release No. 2023-160: SEC Charges 3M with Foreign Corrupt Practices Act Violations Relating to China Subsidiary (Aug. 25, 2023), <https://www.sec.gov/news/press-release/2023-160>; U.S. Securities and Exchange Commission, Administrative Proceeding File No. 3-21470: SEC Charges Gartner, Inc. with FCPA Violations in South Africa (May 26, 2023), <https://www.sec.gov/enforce/34-97609-s>.

⁶ U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

⁷ U.S. Securities and Exchange Commission Press Release No. 2023-92: Dutch Medical Supplier Philips to Pay More Than \$62 Million to Settle FCPA Charges (May 11, 2023), <https://www.sec.gov/news/press-release/2023-92>.

DOJ and SEC Enforcement Actions 2010-2023⁸



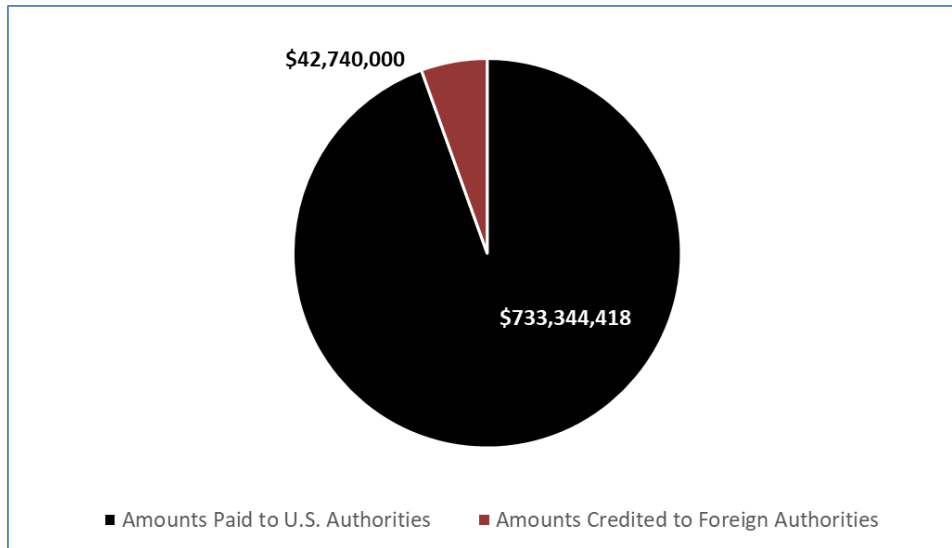
The sum total of FCPA-related resolution payments by companies in 2023 was approximately \$776 million,⁹ which was substantially lower compared to the approximately \$1.56 billion imposed in 2022, but greater than the total resolution amounts paid in 2021 of approximately \$459 million.¹⁰

⁸ For a description of our methodology for counting corporate and individual enforcement actions, see n.3 above.

⁹ To calculate the total resolution amounts imposed in FCPA-related actions against companies, we counted the amounts set out in resolution papers that a settling party could be liable to pay to U.S. enforcement agencies, even if those penalties were ultimately offset by payments to foreign authorities. We believe that the total penalty number, regardless of offsets to foreign authorities, most accurately represents the scope of FCPA liability because U.S. authorities retained the right to collect those amounts. Furthermore, even if in some cases settling parties agreed to larger penalties based on the understanding that there would be an offset, payments made to non-U.S. government agencies can still be traced back to FCPA-related conduct to some degree. In other words, it is unlikely that foreign authorities would have received the same amount without U.S. enforcement activity or the specter of FCPA liability. It is of course impossible to determine how much of a global resolution would have occurred without FCPA enforcement. But because some of those payments are at least partly attributable to FCPA enforcement, we have included them to provide a complete picture of overall FCPA-related liability.

¹⁰ The significantly higher total penalties in 2022 were largely driven by the DOJ resolution with Glencore, which totaled approximately \$701 million and amounted to approximately 45% of the \$1.56 billion total resolution payments in 2022.

Total FCPA Resolution Payments by Companies¹¹ in 2023



2. Enforcement Trends

a. High-Risk Industries

In 2023, the DOJ and SEC continued to bring cases against companies doing business in high-risk industries, such as the energy, healthcare, financial services, and gaming and entertainment sectors. These industries continue to attract FCPA enforcement attention due to their broad geographic reach, reliance on third parties, and heavy government regulation.

1. *Energy.* U.S. enforcement authorities continued to bring cases connected to the energy sector—a higher-risk industry, given its exposure to markets perceived to have higher levels of corruption and the frequent contact with foreign officials—with resolutions including Albemarle (bribing government officials to receive business with state-owned oil refineries in Vietnam, Indonesia, and India),¹² Frank's International N.V. (allegedly bribing Angolan officials to award the company oil field

¹¹ For purposes of this graph, we factor in the offsets to foreign authorities discussed in n.8 when calculating the total amount of FCPA-related resolution payments—including criminal and civil fines, interest, forfeiture, and disgorgement—that were ultimately paid to both U.S. and foreign authorities. In doing so, however, we only include payments to foreign authorities specifically credited in the DOJ or SEC papers and do not count payments made pursuant to separate resolutions entered into by companies with foreign authorities that are not factored into the DOJ and SEC figures.

¹² U.S. Department of Justice Press Release No. 23-107: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>.

services contracts),¹³ Rio Tinto (allegedly bribing Guinean government official for mining rights),¹⁴ and Corsa Coal (bribing Egyptian officials for coal contracts).¹⁵ In addition, four individuals—Javier Aguilar, Glenn Oztemel, Gary Oztemel, and Eduardo Innecco—are facing FCPA-related criminal trials in 2024 in matters relating to government energy contracts.

2. *Healthcare.* In the healthcare sector, the SEC resolution with Dutch medical device manufacturer Philips (allegedly engaged in bribing China-based hospital administrators) illustrates the risk factors in a heavily regulated industry that often engages in (1) sales to government owned or controlled entities in countries where healthcare is nationalized or quasi-nationalized; and (2) the use of third parties, including distribution partners.¹⁶
3. *Financial Services.* The DOJ reached deferred prosecution agreements with multiple financial services companies in 2023, including Corporación Financiera Colombiana S.A. (Corficolombiana), a Colombian financial services institution, (bribing Colombian officials to obtain the rights to construct a major highway in Colombia),¹⁷ and reinsurance brokers Tysers Insurance Brokers Limited (Tysers) and H.W. Wood Limited (H.W. Wood) (conspiring to pay bribes to Ecuadorian officials to obtain business with state-owned insurance companies).¹⁸
4. *Gaming and Entertainment.* Companies in the gaming and entertainment sectors navigate a highly regulated industry, including processes to obtain gaming licenses, permits, and access to distribution channels. For instance, in 2023, the SEC charged Ireland-based global gaming and sports betting company Flutter with FCPA violations in connection with payments made by third-party consultants to Russian government officials to support legalizing poker.¹⁹

¹³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International N.V.*, Rel. No. 97381, File No. 3-21397 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

¹⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Rio Tinto plc*, Rel. No. 97049, File No. 3-21335, ¶ 1 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97049.pdf>; U.S. Securities and Exchange Commission Press Release No. 2023-46: SEC Charges Rio Tinto plc with Bribery Controls Failures (Mar. 6, 2023), <https://www.sec.gov/news/press-release/2023-46>.

¹⁵ Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

¹⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

¹⁷ U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>.

¹⁸ U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

¹⁹ U.S. Securities and Exchange Commission Press Release No. 3-21330: SEC Charges PokerStars Parent Company with FCPA Violations (Mar. 6, 2023), <https://www.sec.gov/enforce/34-97044-s>.

b. Increased SEC Corporate Enforcement

The SEC's increase in the number of FCPA corporate resolutions in 2023 comes after a pandemic-induced dip in the Commission's enforcement activities.²⁰ All nine of the SEC's corporate resolutions in 2023 were settled in administrative proceedings, which is typical for the SEC in FCPA cases. Only two of the nine cases—Albemarle Corporation and Corficolombiana—involved a parallel DOJ corporate resolution. This likely means that for seven of the SEC corporate FCPA resolutions, the DOJ decided not to pursue a corporate resolution with the company, potentially because the DOJ did not view the conduct as rising to the level of criminal or for other evidentiary or programmatic reasons. Of note, in its administrative action against Albemarle Corporation, the SEC did not pursue a civil penalty in light of the criminal fine the DOJ imposed.²¹ Likewise, Corficolombiana avoided a civil monetary penalty from the SEC after paying a fine to the DOJ.²²

c. International Cooperation

The DOJ and SEC continued to build partnerships and cooperation with their international counterparts in 2023.²³ In our 2022 Report, we noted extensive and growing coordination and cooperation with foreign authorities.²⁴ In November 2023, the DOJ formalized some of its efforts in this area and announced the International Corporate Anti-Bribery Initiative (ICAB).²⁵ This program is designed to build on current partnerships and create new international relationships to “facilitate cooperation and information sharing” in foreign bribery investigations, signaling the expansion of international cooperation.²⁶ Of note, the DOJ and the SEC also released a Spanish Edition of the Resource Guide to the FCPA in March 2023.²⁷

²⁰ U.S. Securities and Exchange Commission, SEC Enforcement Actions: FCPA Cases, <https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases>.

²¹ U.S. Department of Justice Press Release No. 23-107: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>; U.S. Securities and Exchange Commission Press Release No. 2023-209: Albemarle Corp. To Pay SEC More Than \$103 Million to Settle FCPA Violations (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-209>.

²² U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>.

²³ Nicole M. Argentieri, Acting Assistant Att'y Gen., DOJ, Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-address-40th>.

²⁴ WilmerHale, *2022 Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>.

²⁵ Nicole M. Argentieri, Acting Assistant Att'y Gen., DOJ, Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-address-40th>.

²⁶ Nicole M. Argentieri, Acting Assistant Att'y Gen., DOJ, Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-address-40th>.

²⁷ U.S. Department of Justice, Criminal Division, and U.S. Securities and Exchange Commission, Enforcement Division, *Guía de referencia sobre el U.S. Foreign Corrupt Practices Act (Ley de Prácticas Corruptas en el Extranjero de los EE. UU.)* (Segunda edición), <https://www.justice.gov/media/1283651/dl?inline>.

The DOJ's announcement of the ICAB followed its first-ever coordinated resolution with Colombian authorities in a foreign bribery case.²⁸ The DOJ also received assistance from the United Kingdom, Panama, Ecuador, and Switzerland in bringing charges against Tysers and H.W. Wood,²⁹ and Australian, Indian, Dutch, and Indonesian law enforcement provided assistance to the DOJ in the Albemarle matter.³⁰

As we noted in our 2022 Report, U.S. authorities appear more willing to announce a resolution ahead of a parallel resolution or announcement by foreign authorities.³¹ Instead of one coordinated announcement of simultaneous resolutions across jurisdictions, resolutions are increasingly resolved by different governments on different timelines, even when elements of the resolutions indicate ongoing coordination. For example, in the Corficolombiana matter, the DOJ credited the company up to half of its \$40.6 million criminal penalty on the condition that it drop its appeal of the parallel resolution efforts by Colombian authorities.³²

d. Continued Focus on Conduct in Latin America

As in prior years, many of the enforcement actions in 2023 involved conduct that occurred in Latin America, including (1) the parallel DOJ and SEC resolutions with Corficolombiana connected to a government-funded highway infrastructure project in Colombia;³³ (2) the DOJ's plea agreement with Orlando Alfonso Contreras Saab related to a conspiracy to bribe Venezuelan officials to receive contracts for food import;³⁴ (3) the deferred prosecution agreement (DPA) with Freepoint Commodities LLC (Freepoint) regarding its scheme to pay bribes to Brazilian government officials to secure business with Petrobras;³⁵ and (4) deferred prosecution agreements with Tysers and H.W. Wood regarding their scheme to pay bribes to Ecuadorian government officials in state-owned insurance companies.³⁶ This

²⁸ U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>.

²⁹ U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

³⁰ U.S. Department of Justice Press Release No. 23-1072: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>.

³¹ WilmerHale, *2022 Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>.

³² U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>.

³³ U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>.

³⁴ Complaint, *United States vs. Orlando Alfonso Contreras Saab*, No. 23-CR-20364 (S.D. Fla. Sept. 11, 2023).

³⁵ U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

³⁶ U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

geographic focus is expected to continue, with Trafigura Group announcing in December that the DOJ is investigating the company's business dealings in Brazil, among other countries.³⁷

In 2023, DOJ charged and is now bringing to trial multiple individuals connected with allegations of bribery in Latin America, including Glenn Oztemel, Gary Oztemel, Eduardo Innecco (allegedly involved in the Freepoint bribery scheme) (jury selection is currently scheduled for September 2024)³⁸ and Javier Aguilar (allegedly engaged in bribery and money laundering to obtain business from Mexico's state-owned oil company for his then-employer, Vitol).³⁹

e. Continued Use of Money Laundering Charges

Money laundering charges have increasingly become an important tool in the U.S. government's fight against international corruption. During remarks delivered in March 2023, DAG Lisa Monaco again emphasized the role that the FCPA and anti-money laundering statutes both have in the DOJ's anti-corruption framework.⁴⁰ In line with this two-pronged strategy, the DOJ brought money laundering charges along with FCPA bribery charges against at least six individuals in 2023. In addition, in bribery cases involving foreign officials, or bribe payers who do not meet the FCPA's jurisdictional touchpoints, the DOJ has continued to rely heavily on money laundering charges as a means of pursuing enforcement actions against these individuals. As noted above, the Foreign Extortion Prevention Act (FEPA), enacted in December 2023, will provide the DOJ with additional tools to prosecute corruption cases against foreign officials.⁴¹

II. KEY POLICY ANNOUNCEMENTS

A. Introduction

In 2023, the DOJ continued to issue further revisions to its corporate criminal enforcement policies and to spell out new priorities concerning prosecutions, cooperation, and corporate compliance. Key updates included expanded, revised and standardized voluntary self-disclosure policies nationwide, an M&A safe harbor policy, a clawbacks pilot program, and an express expansion of the FCPA Criminal Enforcement Policy to all corporate criminal matters handled by the Criminal Division.

³⁷ Julia Payne, *Trafigura sets aside \$127 mln provision for Brazil, US DOJ fine*, Reuters (Dec. 6, 2023), <https://www.reuters.com/markets/commodities/trafigura-sets-aside-127-mln-provision-brazil-us-doj-fine-2023-12-06>.

³⁸ U.S. Department of Justice Press Release No. 23-187: Senior Oil and Gas Trader and Brazil-Based Intermediary Charged in Bribery and Money Laundering Scheme (Feb. 17, 2023), <https://www.justice.gov/opa/pr/senior-oil-and-gas-trader-and-brazil-based-intermediary-charged-bribery-and-money-laundering>; Scheduling Order, *United States v. Oztemel, et al.*, No. 3:23-CR-00026 (D. Conn. Feb. 14, 2023).

³⁹ Indictment, *United States v. Javier Alejandro Aguilar Morales*, No. 4:23-CR-00335 (S.D. Tex. Aug. 3, 2023). Aguilar was previously indicted for a similar scheme involving Ecuador's state-owned oil company, and the jury trial in that case began on January 5, 2024.³⁹ Complaint and Affidavit, *United States v. Javier Aguilar*, No. 1:20-CR-00390 (E.D.N.Y. July 10, 2020); Minute Entry, *United States v. Javier Aguilar*, No. 1:20-CR-00390 (E.D.N.Y. Jan. 5, 2024).

⁴⁰ Lisa O. Monaco, Deputy Att'y Gen., DOJ, Remarks at 2023 Summit for Democracy (Mar. 28, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-defending-rule-law-against-hostile>.

⁴¹ See WilmerHale, *Congress Enacts the Foreign Extortion Prevention Act Targeting Foreign Officials' Conduct*, Section I.A (Dec. 21, 2023), <https://www.wilmerhale.com/insights/client-alerts/20231221-congress-enacts-the-foreign-extortion-prevention-act-targeting-foreign-officials-conduct>.

B. DOJ Announces Revisions to Corporate Criminal Enforcement Policies

1. Revisions to the Department of Justice Criminal Division's Corporate Enforcement Policy⁴²

On January 17, 2023, then-Assistant Attorney General Kenneth A. Polite announced revisions to the Department of Justice Criminal Division's Corporate Enforcement Policy (CEP),⁴³ which expands on guidance formerly known as the FCPA Corporate Enforcement Policy and expressly extends its application to all corporate criminal matters handled by the Criminal Division.⁴⁴ These revisions are aimed at further incentivizing companies to develop and maintain robust corporate compliance programs; to swiftly and voluntarily self-disclose suspected corporate misconduct; to cooperate fully with government investigations; and to timely and appropriately remediate.

Then-AAG Polite reiterated that the CEP revisions align with the Division's top priorities of ensuring individual accountability, as the Division is best positioned to secure such accountability when companies proactively bring corporate misconduct to light.

a. Expanded Eligibility for Declinations Even with Aggravating Circumstances

Under the revised policy, companies that voluntarily self-disclose misconduct may be eligible for a CEP declination, even where aggravating circumstances that may ordinarily warrant a criminal prosecution are present, provided the following conditions are met:

- The company voluntarily disclosed immediately upon becoming aware of the allegation of misconduct;
- At the time of the misconduct and disclosure, the company had in place an effective compliance program and system of internal accounting controls that enabled the identification of the misconduct and led to the voluntary self-disclosure; and
- The company engaged in “extraordinary” cooperation and remediation.

Although this revision to the CEP may appear to mark a significant policy change, the DOJ has in the past awarded CEP declinations despite the presence of aggravating circumstances. Nonetheless, with this announcement, the Criminal Division has formalized eligibility for obtaining a CEP declination in cases involving aggravating circumstances and has established specific, if demanding, requirements for eligibility. Companies now know that the bar for obtaining a declination in these instances will be considerable, given that disclosure must be “immediate,”

⁴² The January 17, 2023 revisions to the Department of Justice Criminal Division's Corporate Enforcement Policy were also detailed in the 2022 Global Anti-Bribery Year-in-Review (Feb. 10, 2023), *WilmerHale, Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>.

⁴³ Kenneth A. Polite, Jr., Assistant Att'y Gen., Criminal Division, DOJ, Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy (Jan. 17, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>.

⁴⁴ With this expansion, the Corporate Enforcement Policy now applies not just to FCPA cases, but also to all corporate criminal matters handled by the Criminal Division, which includes cases handled by the Money Laundering and Asset Recovery Section and all sections within the Fraud Section (which includes the FCPA Unit, Healthcare Frauds Unit, and Market Integrity and Major Frauds Unit).

cooperation and remediation must be “extraordinary,” and the company must have an effective compliance program in place at the time of the misconduct and disclosure.

b. Increased Potential Credit for Voluntary Self-Disclosures that Do Not Receive a Declination

If a company voluntarily self-discloses misconduct, fully cooperates, and timely and appropriately remediates, but does not receive a CEP declination, the DOJ will apply a reduction of at least 50% and up to 75% off of the low end of the U.S. Sentencing Guidelines fine range as part of the criminal resolution, provided that the company is not a criminal recidivist. In similar cases where a company *is* a recidivist, the DOJ will still apply a 50% to 75% reduction, but generally not from the low end of the Guidelines range. Such a situation might occur, for example, where a company voluntarily self-discloses misconduct, aggravating circumstances are involved, and the DOJ therefore determines that the company failed to meet the specific conditions required to obtain a CEP declination. This revised policy represents an increase in the potential credit a company can obtain, as the reduction previously available in such circumstances was capped at 50%.

c. Increased Potential Credit for Extraordinary Cooperation and Remediation Without Voluntarily Self-Disclosure

Companies that do not voluntarily self-disclose, but that otherwise demonstrate full cooperation and remediation will be eligible for a fine reduction of up to 50% from the low end of the U.S. Sentencing Guidelines range. However, there will be no presumption of entitlement to such a reduction, and the most substantial reductions will be reserved for only the “most extraordinary levels” of cooperation and remediation. Recidivists will be eligible for a similar percentage reduction, but generally not from the low end of the Guidelines range. This represents a significant change from the prior guidance, which provided for a maximum penalty reduction of 25% for full cooperation and remediation in non-voluntary self-disclosure cases.

2. Voluntary Self-Disclosure Policy For U.S. Attorneys’ Offices Nationwide

On February 22, 2023, U.S. Attorney for the Southern District of New York, Damian Williams, and U.S. Attorney for the Eastern District of New York, Breon Peace, announced the implementation of the new United States Attorney’s Offices’ Voluntary Self-Disclosure Policy (USAO VSDP).⁴⁵ The USAO VSDP’s stated goal is to “standardize how [voluntary self-disclosures] are defined and credited by USAOs nationwide, and to incentivize companies to maintain effective compliance programs capable of identifying misconduct, expeditiously and voluntarily disclose and remediate misconduct, and cooperate fully with the government in corporate criminal investigations.”⁴⁶ Similar to the Criminal Division’s CEP, the incentives set forth in the USAO VSDP—and their applicability to USAOs across the

⁴⁵ U.S. Department of Justice Press Release No. 23-068: Damian Williams and Breon Peace Announce New Voluntary Self-Disclosure Policy for United States Attorney’s Offices (Feb. 22, 2023), <https://www.justice.gov/usao-sdny/pr/damian-williams-and-breon-peace-announce-new-voluntary-self-disclosure-policy-united>; WilmerHale, *Department of Justice Issues Voluntary Self-Disclosure Policy for Corporate Criminal Enforcement Applicable to U.S. Attorneys’ Offices Nationwide* (Feb. 24, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230224-department-of-justice-issues-voluntary-self-disclosure-policy-for-corporate-criminal-enforcement-applicable-to-us-attorneys-offices-nationwide>.

⁴⁶ U.S. Department of Justice Press Release No. 23-068: Damian Williams and Breon Peace Announce New Voluntary Self-Disclosure Policy for United States Attorney’s Offices (Feb. 22, 2023), <https://www.justice.gov/usao-sdny/pr/damian-williams-and-breon-peace-announce-new-voluntary-self-disclosure-policy-united>.

country—is intended to allow corporations the ability to better weigh the pros and cons of self-reporting potential criminal violations.

As explained in greater detail below, the USAO VSDP provides for reductions in criminal penalties, provided there is voluntary and timely self-disclosure of all relevant known facts. Unlike the Criminal Division's CEP, the USAO VSDP does not create a presumption that the company will receive declination with disgorgement in the absence of aggravating factors. Like the Criminal Division's CEP, the USAO VSDP provides that a self-disclosure will only be deemed timely where the disclosure is made (i) before such misconduct is publicly reported or is otherwise made known to the DOJ; (ii) before an imminent threat of such disclosure or a government investigation exists; and (iii) within a reasonably prompt time after the company becomes aware of the misconduct.⁴⁷ The disclosure must also "include all relevant facts concerning the misconduct that are known to the company at the time of the disclosure" to be deemed a voluntary disclosure under the USAO VSDP.⁴⁸ The USAO VSDP provides for reductions in criminal penalties if the company has fully met the above requirements, fully cooperates, and timely and appropriately remediates the criminal conduct. Specifically, the USAO VSDP provides that the USAO "may choose not to impose a criminal penalty, and in any event will not impose a criminal penalty that is greater than 50% below the low end of the U.S. Sentencing Guidelines fine range."⁴⁹ Additionally, absent aggravating factors, the USAO will not seek a guilty plea.

When there are aggravating factors:

- A guilty plea may be warranted despite a voluntary self-disclosure, including where the misconduct poses a threat to national security, public health, or the environment, is "deeply pervasive" in the company, or involved a company's current executive management;⁵⁰
- In the event a guilty plea is warranted due to an aggravating factor but a company has "voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated the criminal conduct," the USAOs will recommend at least 50% and up to a 75% reduction off of the low end of the U.S. Sentencing Guidelines fine range and will not require appointment of an independent compliance monitor if the company has demonstrated that it has an effective compliance program.⁵¹

The USAO VSDP makes clear that the DOJ is not backing off its drive to encourage voluntary self-disclosures. On the contrary, with the factors on how to assess a voluntary self-disclosure now standardized across USAOs, the

⁴⁷ U.S. Department of Justice, United States Attorneys' Offices Voluntary Self-Disclosure Policy, at 3 (Feb. 22, 2023), <https://www.justice.gov/usao-sdny/press-release/file/1569411/download>.

⁴⁸ U.S. Department of Justice, United States Attorneys' Offices Voluntary Self-Disclosure Policy, at 4 (Feb. 22, 2023), <https://www.justice.gov/usao-sdny/press-release/file/1569411/download>.

⁴⁹ U.S. Department of Justice, United States Attorneys' Offices Voluntary Self-Disclosure Policy, at 4-5 (Feb. 22, 2023), <https://www.justice.gov/usao-sdny/press-release/file/1569411/download>.

⁵⁰ U.S. Department of Justice, United States Attorneys' Offices Voluntary Self-Disclosure Policy, at 4 (Feb. 22, 2023), <https://www.justice.gov/usao-sdny/press-release/file/1569411/download>.

⁵¹ The USAO will refer to the Monaco Memo when evaluating whether the Company has implemented and tested an effective compliance program. U.S. Department of Justice, United States Attorneys' Offices Voluntary Self-Disclosure Policy, at 4-5 (Feb. 22, 2023), <https://www.justice.gov/usao-sdny/press-release/file/1569411/download>.

Department has taken a step in removing uncertainty regarding potentially disparate evaluations of a voluntary self-disclosure.

3. New Mergers & Acquisitions Safe Harbor Policy

On October 4, 2023, DAG Lisa Monaco announced a new safe harbor policy that may shield companies from criminal prosecution for misconduct they uncover at companies they are acquiring or have recently acquired.⁵² Under the Mergers & Acquisitions (M&A) Safe Harbor Policy, the DOJ will presumptively decline to prosecute acquiring companies that discover and voluntarily self-disclose misconduct within six months from the date of closing, cooperate with the DOJ, and “fully remediate” the misconduct within one year from the date of closing. “Our goal is simple: good companies—those that invest in strong compliance programs—will not be penalized for lawfully acquiring companies when they do their due diligence and discover and self-disclose misconduct,” DAG Monaco announced.⁵³

The M&A Safe Harbor Policy will be applied across the entire DOJ and follows previous policy revisions aimed at encouraging voluntary self-disclosures of criminal misconduct by similarly offering potential declinations of prosecutions. The new policy is, however, the DOJ’s most focused effort to date regarding M&A across industries and enforcement areas.

The new policy provides that aggravating factors pertaining to the target company’s misconduct—which include involvement by executive management, significant profits, and egregious or pervasive wrongdoing—will not have any impact on the acquiring company’s ability to obtain a declination.⁵⁴ Furthermore, misconduct disclosed under the M&A Safe Harbor Policy will not be taken into consideration for any future recidivist analysis for the acquiring company.⁵⁵

However, the safe harbor applies to the acquiring entity, not the target company. DOJ has left the approach to the target company a bit uncertain and has stated that the target company can also “potentially” qualify for a declination

⁵² Deputy Attorney General Lisa O. Monaco Announces New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self/>; WilmerHale, *DOJ Announces New Mergers & Acquisitions Safe Harbor Policy* (Oct. 5, 2023), <https://www.wilmerhale.com/en/insights/client-alerts/20231005-doj-announces-new-mergers-acquisitions-safe-harbor-policy>.

⁵³ Lisa O. Monaco, Deputy Att’y Gen., DOJ, Announcement of New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

⁵⁴ Lisa O. Monaco, Deputy Att’y Gen., DOJ, Announcement of New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

⁵⁵ On November 28, 2023, Principal Assoc. Deputy Att’y Gen. (PADAG) Marshall Miller clarified that the Safe Harbor Policy only applies to bona fide, arm’s length transactions and that sham transactions would not qualify for protection under the Safe Harbor Policy and “may even subject the disclosing company to additional criminal liability.” Marshall Miller, Principal Associate Deputy Att’y Gen., DOJ, Remarks at the New York City Bar Association’s International White Collar Crime Symposium (Nov. 28, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-new-york>

in the absence of aggravating circumstances.⁵⁶ Specifically, in the speech announcing the M&A Safe Harbor Policy, DAG Lisa Monaco stated: “Now, one question we have heard is how the Department will treat the acquired entity when an acquirer voluntarily self-discloses under the Safe Harbor Policy. Unless aggravating factors exist at the acquired company, that entity can also qualify for applicable Voluntary Self Disclosure benefits, including potentially a declination.”⁵⁷

In the speech, DAG Lisa Monaco also said: “We are placing an enhanced premium on timely compliance-related due diligence and integration,” noting further that “compliance must have a prominent seat at the deal table if an acquiring company wishes to effectively de-risk a transaction,”⁵⁸ Monaco said in her prepared remarks.⁵⁹ Companies should, therefore, not delay self-disclosure if they wish to take full advantage of the policy.

4. Revision of the Criminal Division’s Evaluation of Corporate Compliance Programs

a. Rollout of Pilot Program on Compensation Incentives and Clawbacks

On March 3, 2023, as part of updating the Criminal Division’s Evaluation of Corporate Compliance Programs (ECCP), the DOJ released a new pilot program – aptly named The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks – ⁶⁰ applicable to all corporate matters handled by the Criminal Division beginning on⁶¹[\[redacted\]](https://www.justice.gov/file/1571416/download)

The Pilot Program includes two key components. *First*, during the Pilot Program, every corporate resolution will now include a requirement that the resolving company develop compliance-promoting criteria within its compensation and bonus systems. Example criteria from the DOJ include (1) withholding bonuses from employees who fail to satisfy compliance performance requirements; (2) disbursement of financial incentives for employees who fully comply with compliance processes; and (3) additional disciplinary measures for employees who violate relevant laws, including employees who are “willfully blind” to misconduct or supervise employees engaged in misconduct.⁶² *Second*, the Pilot Program provides potential fine reductions to companies that seek to clawback corporate compensation from

⁵⁶ Lisa O. Monaco, Deputy Att’y Gen., DOJ, Remarks on New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

⁵⁷ Lisa O. Monaco, Deputy Att’y Gen., DOJ, Remarks on New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

⁵⁸ Lisa O. Monaco, Deputy Att’y Gen., DOJ, Remarks on New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

⁵⁹ Monaco also made clear that the new policy applies only in the criminal context and does not affect civil merger enforcement.

⁶⁰ U.S. Department of Justice, The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks, at 1 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>; WilmerHale, *DOJ Announces Significant Guidance on Compliance, Compensation, Communications and Cooperation* (Mar. 3, 2023), <https://www.wilmerhale.com/en/insights/client-alerts/20230303-doj-announces-significant-guidance-on-compliance-compensation-communications-and-cooperation>.

⁶¹ U.S. Department of Justice, The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks, at 1 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>.

⁶² U.S. Department of Justice, The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks, at 1 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>.

wrongdoers. Under the Pilot Program, companies that successfully clawback compensation from wrongdoers may be able to reduce their fines by the amount of money that it was able to recover.⁶³ And even if the company is unsuccessful in clawing back compensation, it may be eligible for a fine reduction of up to 25% of the compensation that it sought to recover.⁶⁴ In evaluating whether a company is eligible for a relevant fine reduction, the DOJ will look for good faith efforts to clawback compensation from individuals involved in misconduct and supervisors with knowledge, whether actually aware of the misconduct or willfully blind to it.⁶⁵ However, companies can face many obstacles to clawing back such compensation—including incurring legal fees that may far exceed the clawed-back amount—so it remains to be seen how effective this policy will be.⁶⁶

In a discussion with the American Bar Association (ABA) National Institute on White Collar Crime, DAG Lisa Monaco explained that the policy is intended to “shift the burden of corporate malfeasance away from uninvolved shareholders onto those more directly responsible,”⁶⁷ and in his keynote remarks at the same event, then-AAG Polite specifically noted that prosecutors will consider how “a company’s compensation system contributes to the presence—or lack—of an effective compliance program.”⁶⁸

b. New Guidance Regarding Use of Personal Devices and Communications Platforms

The March 2023 revision of the ECCP also includes new guidance with respect to the use of personal devices and communications platforms, including those offering ephemeral messages. Then-AAG Polite explained that, under the new ECCP, prosecutors are advised to “consider a corporation’s approach to the use of personal devices as well as various communications platforms and messaging applications, including those offering ephemeral messaging.”⁶⁹ In designing policies, companies should consider their risk profile and business needs, but endeavor to preserve as

⁶³ Lisa Monaco, Deputy Att’y Gen., DOJ, Remarks at American Bar Association National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

⁶⁴ U.S. Department of Justice, The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks, at 2-3 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>.

⁶⁵ U.S. Department of Justice, The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks, at 2-3 (Mar. 3, 2023), <https://www.justice.gov/file/1571416/download>.

⁶⁶ Then-AAG Polite mentioned the December 2022 declination granted to Safran SA as an example of the policy in action. He noted that the company’s remediation included the withholding of deferred compensation. Kenneth A. Polite, Jr., Assistant Att’y Gen., DOJ, Keynote at the ABA’s 38th Annual National Institute on White Collar Crime (Mar. 3, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-aba-s-38th-annual-national>. See also Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

⁶⁷ Lisa Monaco, Deputy Att’y Gen., DOJ, Remarks at American Bar Association National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

⁶⁸ Kenneth A. Polite, Jr., Assistant Att’y Gen., DOJ, Keynote at the ABA’s 38th Annual National Institute on White Collar Crime (Mar. 3, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-aba-s-38th-annual-national>.

⁶⁹ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Keynote at American Bar Association National Institute on White Collar Crime (Mar. 3, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-aba-s-38th-annual-national>

much electronic data as is feasible.⁷⁰ As with the compensation-related guidance, the policy encourages prosecutors to “consider how the policies and procedures have been communicated to employees, and whether the corporation has enforced the policies and procedures on a regular and consistent basis in practice.”⁷¹

In announcing the guidance, then-AAG Polite noted that during an investigation, if a company has not produced communications from third-party messaging applications, prosecutors will not accept companies’ representations at face value and will ask questions about the company’s ability to access such communications and whether they are stored on company devices or servers and in accordance with applicable privacy and local laws. “A company’s answers—or lack of answers—may very well affect the offer it receives to resolve criminal liability,” and companies with “bring your own device” policies are not exempt from this guidance.⁷²

These changes are consistent with recent attention, not just from the DOJ, but from other enforcement authorities, including the SEC, on the retention of communications over various channels, including ephemeral messaging, and the policies around them.⁷³ Companies should consider reassessing their policies in this area, as well as evaluating their approach to communicating and enforcing those policies.

5. Updates to Monitor Selection Policy

On March 1, 2023, then-AAG Polite issued a revised memorandum on the imposition and selection of monitors for companies entering into resolutions with the Criminal Division (the “Polite Memo”).⁷⁴ The Polite Memo did not institute significant changes regarding the use and selection of monitors from prior DOJ guidance, but it outlined four clarifying principles:

a. No Default Presumption for or Against the Use of Monitors.

The Polite Memo reaffirms prior DOJ guidance that prosecutors should not apply any general presumption, in favor of or against, imposing an independent compliance monitor. Instead, the Memo includes a list of 10 non-exhaustive factors that should be considered when determining whether a monitor is appropriate in a specific instance, including whether a voluntary self-disclosure was made, an evaluation of the company’s compliance program, and a

⁷⁰ U.S. Department of Justice, Criminal Division, Evaluation of Corporate Compliance Programs, at 17 (updated Mar. 2023), <https://www.justice.gov/opa/speech/file/1571911/download>.

⁷¹ U.S. Department of Justice, Criminal Division, Evaluation of Corporate Compliance Programs, at 17 (updated Mar. 2023), <https://www.justice.gov/opa/speech/file/1571911/download>.

⁷² Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Keynote at American Bar Association National Institute on White Collar Crime (Mar. 3, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-aba-s-38th-annual-national>.

⁷³ Both the CFTC and SEC have reached substantial settlements with financial companies for failing to monitor and retain off-channel communications. See U.S. Commodity Futures Trading Commission Press Release No. 8762-23: CFTC Orders Four Financial Institutions to Pay Total of \$260 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods (Aug. 8, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8762-23>; U.S. Securities and Exchange Commission Press Release No. 2023-149: SEC Charges 11 Wall Street Firms with Widespread Recordkeeping Failures (Aug. 8, 2023), <https://www.sec.gov/news/press-release/2023-149>; U.S. Securities and Exchange Commission Press Release No. 2023-212: SEC Charges 10 Wall Street Firms with Widespread Recordkeeping Failures (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-212>.

⁷⁴ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Revised Memorandum on Selection of Monitors in Criminal Division Matters (Mar. 1, 2023), <https://www.justice.gov/opa/speech/file/1571916/download>.

determination of how pervasive the criminal conduct was across the business organization.⁷⁵ The factors are intended to determine “whether misconduct occurred under different corporate leadership or within a compliance environment that no longer exists within a company” and whether resulting changes “in corporate culture and/or leadership are adequate to safeguard against a recurrence of misconduct.”⁷⁶ The memo instructs prosecutors to also consider resourcing and general adequacy of a company’s compliance program and controls in determining whether the imposition of a monitor is appropriate.

b. Application of Monitor Requirements to Monitor Teams.

The Polite Memo also clarifies that, “consistent with the Criminal Division’s practice since at least 2018, many of the requirements for monitors apply to monitor teams, in addition to the titular monitors.”⁷⁷ This includes nomination by a company, the monitor selection process, and requirements for monitorship team personnel such as cooling-off period requirements.

c. Adherence to Diversity, Equity and Inclusion Principles.

The Polite Memo also “makes explicit what has been the case the last several years—that any submission of a monitor candidate by the company and selection of a monitor candidate by the Criminal Division should be made in keeping with the department’s commitment to diversity, equity, and inclusion.”⁷⁸ The monitor selection process must also refrain from unlawful discrimination against any person or class of persons.

d. The Cooling-Off Period for Monitors Is Extended from Two Years to Three Years.

The Polite Memo extends the period during which monitors and their teams cannot be employed by the companies they are monitoring from two years to three years after a monitorship concludes. This restriction applies not only to the monitor and his or her team, but also to any “personnel or entities who will assist him/her in the monitorship of the company.”⁷⁹ The monitored company, its agents, employees, directors, and subsidiaries may also not enter into any “consultant, agency, attorney-client, auditing, or other professional relationship” with any member of the monitorship team or supporting personnel, including forensic accounting firms.⁸⁰

⁷⁵ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Revised Memorandum on Selection of Monitors in Criminal Division Matters, at 2-3 (Mar. 1, 2023), <https://www.justice.gov/opa/speech/file/1571916/download>.

⁷⁶ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Revised Memorandum on Selection of Monitors in Criminal Division Matters, at 3 (Mar. 1, 2023), <https://www.justice.gov/opa/speech/file/1571916/download>.

⁷⁷ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Revised Memorandum on Selection of Monitors in Criminal Division Matters, at 2 (Mar. 1, 2023), <https://www.justice.gov/opa/speech/file/1571916/download>.

⁷⁸ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Keynote at the ABA’s 38th Annual National Institute on White Collar Crime (Mar. 3, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-aba-s-38th-annual-national>.

⁷⁹ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Revised Memorandum on Selection of Monitors in Criminal Division Matters, at 6 (Mar. 1, 2023), <https://www.justice.gov/opa/speech/file/1571916/download>.

⁸⁰ Kenneth A. Polite, Jr., Assistant Att’y Gen., Criminal Division, DOJ, Revised Memorandum on Selection of Monitors in Criminal Division Matters, at 6 (Mar. 1, 2023), <https://www.justice.gov/opa/speech/file/1571916/download>.

6. DOJ International Corporate Anti-Bribery Initiative

On November 29, 2023, Acting Assistant Attorney General (AAG) Nicole M. Argentieri announced the International Corporate Anti-Bribery Initiative (ICAB) during her keynote remarks at the 40th International Conference on the Foreign Corrupt Practices Act, describing it as a new initiative intended to strengthen the DOJ's "international partnerships in key parts of the world," enhance its "ability to identify and prosecute foreign bribery offenses," and "generate new and impactful cases."⁸¹

Acting AAG Argentieri did not specify which regions would be the initial focus of the new initiative, but stated that the early focus would be "on regions where we can have the most impact in both coordination and case generation, with a focus on key threats to financial markets and the rule of law."⁸²

C. DOJ Statements on Enforcement Priorities

1. Then-Assistant Attorney General Polite's Remarks Regarding "Extraordinary Cooperation"

As discussed above, on January 17, 2023, then-AAG Polite announced revisions to the Criminal Division's CEP,⁸³ specifically including guidance to "distinguish between 'extraordinary' and 'full' cooperation under the revised policy."⁸⁴ Although he noted key concepts such as immediacy, consistency, degree, and impact and that extraordinary cooperation must be more than "run of the mill, or even gold-standard cooperation," he acknowledged the distinction is "perhaps more in degree than kind."⁸⁵

In his remarks from the Global Investigations Review Live DC Spring Conference in March 2023, then-AAG Polite clarified further that he could "never articulate, in advance, what exactly will or will not" be extraordinary and that "[t]he best way to understand these terms is to see how they are applied in future cases."⁸⁶ Similar to extraordinary cooperation, then-AAG Polite remarked that "'extraordinary' remediation must go beyond the policy's criteria,"⁸⁷ citing

⁸¹ Nicole M. Argentieri, Acting Assistant Att'y Gen. Delivers Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-address-40th>.

⁸² Nicole M. Argentieri, Acting Assistant Att'y Gen. Delivers Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act, (Nov. 29, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-address-40th>.

⁸³ Kenneth A. Polite, Jr., Assistant Att'y Gen., DOJ, Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy (Jan. 17, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>.

⁸⁴ Kenneth A. Polite, Jr., Assistant Att'y Gen., DOJ, Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy (Jan. 17, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>.

⁸⁵ Kenneth A. Polite, Jr., Assistant Att'y Gen., DOJ, Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy (Jan. 17, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>.

⁸⁶ Kenneth A. Polite, Jr., Assistant Att'y Gen., DOJ, Keynote Address at the Global Investigations Review Live: DC Spring Conference (Mar. 23, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-address-global>.

⁸⁷ Kenneth A. Polite, Jr., Assistant Att'y Gen., DOJ, Keynote Address at the Global Investigations Review Live: DC Spring Conference (Mar. 23, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-address-global>.

root cause analyses, prevention despite significant costs, and holding wrongdoers accountable through employment action.⁸⁸ According to then-AAG Polite, some features of extraordinary cooperation may include making foreign employees available for interview, producing documents in a manner so as not to offend foreign data privacy laws, and translating documents. Beyond these examples (many of which are routinely performed by companies cooperating with government investigations), no further clarification as to the meaning of “extraordinary” has been offered by the DOJ.

2. Deputy Attorney General Monaco’s Remarks on Sanctions as the New FCPA

In a March 2023 speech at the ABA National Institute on White Collar Crime, DAG Lisa Monaco announced a surge in resources to focus on the intersection of corporate crime and national security,⁸⁹ with a significant restructuring and new commitments to the National Security Division that include:

- Adding more than 25 new prosecutors for sanctions, export control crimes, and related economic crimes;
- The appointment of the first-ever chief counsel for corporate enforcement in the National Security Division;
- The creation of joint advisories with the Department of Commerce and the Department of the Treasury, similar to the FCPA guidance issued by the DOJ and SEC; and
- A substantial investment in the Bank Integrity Unit of the Money Laundering and Asset Recovery Section

DAG Monaco explained that corporate criminal investigations increasingly carry “profound national security implications” and specifically noted the October 2022 resolution with French cement company Lafarge S.A.—which pleaded guilty to conspiring to provide material support to ISIS and another terrorist organization—as an example of the DOJ’s efforts in this area.⁹⁰

DAG Monaco also echoed her prior belief that “sanctions are the new FCPA.” She noted how Russia’s invasion of Ukraine served as a catalyst for increased sanctions and export control enforcement and shared that the Office of Foreign Assets Control and DOJ had recently increased their activity in this space. She further mentioned that the DOJ currently has a number of significant corporate investigations that concern sanctions evasion in the transportation, technology, defense, banking and agriculture industries.

⁸⁸ Accordingly, then-AAG Polite noted that, in determining whether remediation is “extraordinary,” prosecutors “will consider if the action has been comprehensive, tailored to the causes of the misconduct under investigation as well as other potential wrongdoing, and able to prevent it from recurring.” Kenneth A. Polite, Jr., Assistant Att’y Gen., DOJ, Keynote Address at the Global Investigations Review Live: DC Spring Conference (Mar. 23, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-keynote-address-global>.

⁸⁹ Lisa Monaco, Deputy Att’y Gen., DOJ, Remarks at the American Bar Association National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

⁹⁰ Lisa Monaco, Deputy Att’y Gen., DOJ, Remarks at the American Bar Association National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

DAG Monaco stated that the National Security Division will work closely with U.S. Attorneys Offices “to apply enforcement strategies that have proven their worth.”

3. Principal Associate Deputy Attorney General Miller’s Remarks Regarding Voluntary Self-Disclosure, Breaches of Prior Resolutions, the Pilot Program, and National Security

On September 21, 2023, PADAG Marshall Miller gave a speech at the Global Investigations Review annual meeting, in which he discussed the DOJ’s emphasis on voluntary self-disclosure, breaches of prior resolutions, the newly announced pilot program, and national security.⁹¹

a. Voluntary Self-Disclosure

PADAG Miller noted that the DOJ has attempted to increase “transparency and predictability as to the requirements for a voluntary self-disclosure and the significant benefits involved.”⁹² He also mentioned how the DOJ was focusing on self-disclosure in the M&A process by offering incentives to acquiring companies that uncover and report misconduct during the due diligence process.⁹³

b. Breaches of Prior Resolutions

PADAG Miller also noted that the DOJ would more regularly seek to require a guilty plea in the event that a company violates a DPA or NPA. For example, he observed that the telecommunications company Telefonaktiebolaget LM Ericsson (Ericsson) “failed to live up to its commitments” after it entered into a DPA in 2019 concerning an international bribery scheme and, as a result, had to plead guilty to two charges, pay an additional \$200 million, and extend its monitorship.⁹⁴

c. Pilot Program Regarding Compensation Incentives and Clawbacks

In discussing the pilot program on compensation incentives and clawbacks, PADAG Miller emphasized the importance of having active clawback policies that are reviewed “long before a company discovers misconduct, so that it is well positioned to get the best result for its shareholders.”⁹⁵

⁹¹ Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

⁹² Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

⁹³ Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

⁹⁴ Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

⁹⁵ Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

d. National Security

In light of the increased complexity of international relations, PADAG Miller put companies on notice that “a new level of diligence and attention is required” beyond simple “sanctions-screening software and attention to a couple of sanctioned countries[.]”⁹⁶ Indeed, companies should take caution as increased resources and attention to corporate crime touching on national security has yielded major resolutions involving companies allegedly promoting North Korea’s nuclear program, trading Iranian oil, and supplying “microelectronics with military applications to Russia.”⁹⁷ PADAG Miller further advised that all companies should take notice, even those “far removed from the defense sector” because they can pose dire national security risks if they “are not highly sensitive to high-risk actors, high-risk regions, and high-risk activities.”⁹⁸

4. Acting Assistant Attorney General Argentieri’s Remarks at the American Bar Association’s 10th Annual London White Collar Crime Institute

On October 10, 2023, Acting AAG Argentieri gave a speech at the ABA’s 10th Annual London White Collar Crime Institute regarding the importance of partnerships and cooperation among foreign authorities. She also addressed the DOJ’s implementation of its CEP revisions and the pilot program, Task Force KleptoCapture’s enforcement of Russian sanctions, and the DOJ’s M&A Safe Harbor Policy.⁹⁹

a. Cooperation Among Foreign Authorities

Acting AAG Argentieri stated that cooperation among foreign authorities is “mission critical” and that it was “one of the most important developments in white collar enforcement over the last decade.”¹⁰⁰ She cited the DOJ’s 2022 announcement of its “first coordinated resolution with authorities in South Africa [when] ABB Ltd. agreed to pay \$315

⁹⁶ Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

⁹⁷ Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>; U.S. Department of Justice Press Release No. 23-1,178: Justice Department Files Civil Forfeiture Complaint Against \$300 Million Superyacht (Oct. 23, 2023), <https://www.justice.gov/opa/pr/justice-department-files-civil-forfeiture-complaint-against-300-million-superyacht>; U.S. Department of Justice Press Release No. 3-982: Justice Department Announces First Criminal Resolution Involving the Illicit Sale and Transport of Iranian Oil in Violation of U.S. Sanctions (Sept. 8, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-first-criminal-resolution-involving-illicit-sale-and-transport>; U.S. Department of Justice Press Release No. 23-950: Russian-German National Arrested for Illegally Exporting to Russia Sensitive U.S.-Sourced Microelectronics with Military Applications in Violation of U.S. Export Controls (Aug. 31, 2023), <https://www.justice.gov/opa/pr/russian-german-national-arrested-illegally-exporting-russia-sensitive-us-sourced>.

⁹⁸ Marshall Miller, Principal Assoc. Deputy Att’y Gen., DOJ, Remarks at the Global Investigations Review Annual Meeting (Sept. 21, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-global>.

⁹⁹ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰⁰ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

million for bribing a high-ranking official.”¹⁰¹ And in August 2023, the DOJ announced its “first-ever coordinated resolution with Colombian authorities in a foreign bribery case” with the Corficolombiana settlement, discussed further below in Section III.B.2.b.¹⁰² In conclusion, Acting AAG Argentieri reaffirmed her intention to continue working with foreign partners “to amplify . . . change internationally” through both “enforcement and policy work[.]”¹⁰³

b. Implementation of CEP Revisions and the Pilot Program

Acting AAG Argentieri further cited the Corficolombiana resolution as a prime example of the DOJ’s implementation of its CEP revisions. Corficolombiana was able to obtain a 30% reduction from the low-end of the fine range by taking significant cooperative and remedial steps, including a root cause analysis of the misconduct, prompt actions to enhance its corporate governance and controls at joint venture entities, an overhaul of its compliance program, and establishment of a disciplinary process overseen by a cross-functional ethics committee.¹⁰⁴ She also referenced the resolution with Albemarle Corp., which was able to secure a 45% reduction in its resolution because of its voluntary, though not prompt, disclosure and substantial remediation, including “extensive enhancements to its corporate compliance program,” termination of hundreds of third-party sales representatives, and decision to shift to a direct sales business model.¹⁰⁵ Notably, under the prior CEP regime, Albemarle would have only been able to secure a maximum reduction of 25%, which Acting AAG Argentieri emphasized as showing the benefits of self-reporting, even if delayed, under the new CEP.

Acting AAG Argentieri also highlighted that the DOJ awarded its first fine reduction under the Pilot Program on compensation in its resolution with Albemarle, when the Fraud Section’s FCPA Unit and the U.S. Attorney’s Office in the Western District of North Carolina reduced Albemarle’s penalty by \$763,000 because Albemarle was able to freeze bonus payments to those suspected of misconduct during its investigation.

c. Task Force KleptoCapture’s Enforcement of Russian Sanctions

Task Force KleptoCapture, a program created in March 2022 to target and forfeit the proceeds of foreign official corruption, has continued to “ensure that oligarchs feel the full impact of the economic sanctions that the United

¹⁰¹ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰² Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰³ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰⁴ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰⁵ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

States has levied in response to Russia’s invasion of Ukraine,” according to Acting AAG Argentieri.¹⁰⁶ Regarding Task Force KleptoCapture’s enforcement of Russian sanctions, Acting AAG Argentieri specifically noted the DOJ’s success in seizing various assets from Russian oligarchs, including a \$300 million yacht and two jets. She also reported that the DOJ was able to secure “the guilty pleas of two individuals who engaged in a scheme to violate sanctions imposed against a Ukrainian oligarch for his misappropriation of state assets of Ukraine.”¹⁰⁷

d. DOJ M&A Safe Harbor Policy

Lastly, Acting AAG Argentieri noted that the DOJ’s M&A Safe Harbor Policy will work in tandem with the CEP to further the DOJ’s goal of individual accountability by “incentiviz[ing] companies to report bad acts that [the DOJ] would not otherwise know about.”¹⁰⁸

D. Other Relevant Policy Developments

On March 29, 2023, the White House issued a fact sheet detailing its recent accomplishments and renewed commitment to the U.S. Strategy on Countering Corruption (SCC).¹⁰⁹ President Biden first issued the SCC on December 6, 2021, noting five pillars of focus for combatting corruption:

- Modernizing, coordinating, and resourcing U.S. efforts to fight corruption;
- Holding corrupt actors accountable;
- Preserving and strengthening the multilateral anti-corruption architecture;
- Preserving and Strengthening the Multilateral Anti-Corruption Architecture; and
- Improving Diplomatic Engagement and Leveraging Foreign Assistance.

In the updated 2023 fact sheet, the Biden Administration highlighted progress made within each pillar, including the creation of new boards and federal policies aimed at combatting corruption domestically and abroad. Additionally, it detailed the coordinated efforts between multiple federal agencies, namely the DOJ, State Department, Treasury Department, and U.S. Agency for International Development, to prevent illicit finance and punish those who engage in corrupt acts. Finally, the fact sheet detailed the ways in which the Biden Administration is collaborating with foreign

¹⁰⁶ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰⁷ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰⁸ Nicole M. Argentieri, Acting Assistant Att’y Gen., DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁰⁹ The White House, Fact Sheet: Implementing the United States Strategy on Countering Corruption: Accomplishments and Renewed Commitment in the Year of Action (Mar. 29, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/29/fact-sheet-implementing-the-united-states-strategy-on-countering-corruption-accomplishments-and-renewed-commitment-in-the-year-of-action>.

governments and international bodies to facilitate law enforcement partnerships, cooperation, and information-sharing across the world, with the goal of promoting a corruption-free international economic system.

On December 12, 2023, Senators questioned top-ranking DOJ officials as to why corporate wrongdoing has not led to more frequent criminal prosecutions.¹¹⁰ In response, Acting AAG Argentieri noted that the DOJ has “charged over 30 corporate executives, including the CEO of the world’s largest cryptocurrency exchange who pled guilty last month.”¹¹¹ At the same time, Acting AAG Argentieri defended the use of DPAs and NPAs to resolve corporate matters, telling Senators that “deferred prosecution agreements [and] nonprosecution agreements—[...] are really serious agreements that are highly negotiated, and they require forward looking change by a company. So they’re not a pass.”¹¹²

Acting AAG Argentieri stated, however, that with more resources, the DOJ could “do more.”¹¹³ Indeed, the DOJ has “committed to making corporate criminal enforcement a priority, including through the formation of a Corporate Crime Advisory Group and additional policy changes guiding corporate crime enforcement.”¹¹⁴

E. Changes in Relevant Personnel

During 2023, David Fuhr was promoted to Chief of the DOJ’s FCPA Unit, following prior-Chief David Last’s departure.¹¹⁵ Fuhr has been with the FCPA Unit since 2013, and he most recently served as Principal Assistant Chief of the FCPA Unit for two years.¹¹⁶ During his time at the DOJ, Fuhr has worked on many high-profile cases, including the Credit Suisse Group AG, Odebrecht S.A., and Keppel Offshore & Marine Ltd. corporate resolutions.

¹¹⁰ U.S. Senate Committee on The Judiciary Press Release: Durbin Questions DOJ Officials, Witnesses During Senate Judiciary Committee Hearing on Ensuring Accountability for Corporate Criminals (Dec. 12, 2023), <https://www.judiciary.senate.gov/press/releases/durbin-questions-doj-officials-witnesses-during-senate-judiciary-committee-hearing-on-ensuring-accountability-for-corporate-criminals>. In his questioning, Senator Grassley (R-IA) noted that the DOJ “only prosecutes individuals in 60% of the cases it brings against companies.”¹¹⁰ Senator Durbin (D-IL) also noted that in 2020, the “DOJ prosecuted only 94 corporate crimes, and, in 2021, only 90 corporate crimes were prosecuted—[...] less than half of the average annual number of corporate crime prosecutions in the previous 25 years.”

¹¹¹ Bill Penn, *DOJ Leaders Face Bipartisan Calls to Get Tougher on Executives*, BLOOMBERG LAW (Dec. 12, 2023), <https://news.bloomberglaw.com/us-law-week/doj-leaders-face-bipartisan-calls-to-get-tougher-on-executives>.

¹¹² Bill Penn, *DOJ Leaders Face Bipartisan Calls to Get Tougher on Executives*, BLOOMBERG LAW (Dec. 12, 2023), <https://news.bloomberglaw.com/us-law-week/doj-leaders-face-bipartisan-calls-to-get-tougher-on-executives>.

¹¹³ Bill Penn, *DOJ Leaders Face Bipartisan Calls to Get Tougher on Executives*, BLOOMBERG LAW (Dec. 12, 2023), <https://news.bloomberglaw.com/us-law-week/doj-leaders-face-bipartisan-calls-to-get-tougher-on-executives>.

¹¹⁴ U.S. Senate Committee on The Judiciary Press Release: Durbin Questions DOJ Officials, Witnesses During Senate Judiciary Committee Hearing on Ensuring Accountability for Corporate Criminals (Dec. 12, 2023), <https://www.judiciary.senate.gov/press/releases/durbin-questions-doj-officials-witnesses-during-senate-judiciary-committee-hearing-on-ensuring-accountability-for-corporate-criminals>.

¹¹⁵ Max Fillion, *David Last: claims that DOJ outsources investigations are “frankly absurd”*, GLOBAL INVESTIGATIONS REV. (July 13, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/david-last-claims-doj-outsources-investigations-are-frankly-absurd>; Max Fillion and Anna Bianca Roach, *David Fuhr named acting chief of FCPA Unit*, GLOBAL INVESTIGATIONS REV. (May 8, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/david-fuhr-named-acting-chief-of-fcpa-unit>.

¹¹⁶ Max Fillion and Anna Bianca Roach, *David Fuhr named acting chief of FCPA Unit*, GLOBAL INVESTIGATIONS REV. (May 8, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/david-fuhr-named-acting-chief-of-fcpa-unit>.

In June 2023, the DOJ appointed Keith Edelman as the new Acting Principal Assistant Chief of the FCPA Unit, and later named Edelman to the permanent role, taking over David Fuhr's prior role.¹¹⁷ Edelman was formerly Senior Counsel to the Assistant Attorney General for the Criminal Division, where he advised on matters related to fraud, cryptocurrency, and public corruption.¹¹⁸ He recently returned to the DOJ, joining in 2022 from Meta, where he served as an associate general counsel.¹¹⁹ Prior to that role, he was an Assistant U.S. Attorney in the Eastern District of New York and served as Deputy Chief of the Organized Crime and Gangs Section, and he also played a key role in the long-running investigation of corruption at FIFA and other soccer organizations.¹²⁰

In July 2023, AAG Polite left his position as Chief of the DOJ's Criminal Division¹²¹ and was succeeded by Acting Chief Nicole Argentieri, who previously worked under Polite as second-in-command of the division.¹²² Before that role, Argentieri served as an Assistant U.S. Attorney in the Eastern District of New York for over a decade, where she held multiple leadership roles, including Chief of the Public Integrity Section as well as a partner in a law firm.¹²³

III. **KEY INVESTIGATION RELATED DEVELOPMENTS**

A. **Notable Features of Corporate Resolutions**

This year saw an uptick in the number of corporate FCPA settlements by U.S. enforcement authorities. In total, 13 corporations—Telefonaktiebolaget LM Ericsson (Ericsson), Albemarle Corporation (Albemarle), Corficolombiana, Rio Tinto plc, Flutter Entertainment, plc (Flutter), Frank's International, Freepoint Commodities LLC (Freepoint), Koninklijke Philips N.V. (Philips), Gartner, Inc. (Gartner), 3M Company (3M), Clear Channel Outdoor Holdings (Clear

¹¹⁷ Anna Bianca Roach, *Keith Edelman named acting second-in-command of FCPA Unit*, GLOBAL INVESTIGATIONS REV. (June 2, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/keith-edelman-named-acting-second-in-command-of-fcpa-unit>.

¹¹⁸ *Keith D. Edelman Biography*, PRACTISING LAW INSTITUTE, <https://www.pli.edu/faculty/keith-d.-edelman-i2135696>.

¹¹⁹ Anna Bianca Roach, *Keith Edelman named acting second-in-command of FCPA Unit*, GLOBAL INVESTIGATIONS REV. (June 2, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/keith-edelman-named-acting-second-in-command-of-fcpa-unit>.

¹²⁰ Anna Bianca Roach, *Keith Edelman named acting second-in-command of FCPA Unit*, GLOBAL INVESTIGATIONS REV. (June 2, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/keith-edelman-named-acting-second-in-command-of-fcpa-unit>; *Keith D. Edelman Biography*, PRACTISING LAW INSTITUTE, <https://www.pli.edu/faculty/keith-d.-edelman-i2135696>.

¹²¹ Max Fillion, *Kenneth Polite set to leave DOJ by end of July*, GLOBAL INVESTIGATIONS REV. (July 18, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/kenneth-polite-set-leave-doj-end-of-july>.

¹²² Max Fillion, *Kenneth Polite set to leave DOJ by end of July*, GLOBAL INVESTIGATIONS REV. (July 18, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/kenneth-polite-set-leave-doj-end-of-july>.

¹²³ Staff Profile, Acting Assistant Att'y Gen. Nicole M. Argentieri, DOJ (updated Oct. 18, 2023), <https://www.justice.gov/criminal/meet-aag>.

Channel), Tysers Insurance Brokers Limited (Tysers) and H.W. Wood Limited (H.W. Wood)—entered into a total of 15 FCPA settlements with the DOJ, SEC, or both, compared to eight in 2022 and four in 2021.¹²⁴

1. Breach of an Existing FCPA Resolution

As noted above in Section II.B, the DOJ's announcement of its January 2023 revised Corporate Enforcement Policy (CEP) signaled that the Department would apply a more holistic approach to evaluating corporate misconduct, thus attempting to incentivize companies to voluntarily self-disclose misconduct.¹²⁵ While the revisions to the CEP were focused on incentivizing cooperation, the DOJ illustrated the consequences of non-cooperation in its settlement with Ericsson in 2023.¹²⁶ As a result of breaching its 2019 DPA because it failed to fully cooperate and disclose information required by the DPA, Ericsson was required to enter into a guilty plea, pay a criminal penalty of more than \$206 million, and agree to a year-long extension of its compliance monitor.¹²⁷

2. Application of DOJ's Pilot Program Regarding Compensation Incentives and Clawbacks

As discussed in Section II.B, the three-year pilot program regarding compensation incentives and clawbacks rolled out in March 2023, and the DOJ applied the pilot program to two resolutions: Albemarle and Corficolombiana. Albemarle, the first corporation to benefit from the pilot program, paid a total criminal penalty of \$98.2 million, which reflected a reduction of \$763,453 under Part II of the pilot program for bonuses that Albemarle withheld from qualifying employees.¹²⁸ The DOJ applied Part I of the pilot program to its subsequent resolution with Corficolombiana, which did not result in a fine reduction.¹²⁹ According to Acting AAG Argentieri, Corficolombiana pledged to follow the program requirement and establish a compensation system that rewards compliance and is

¹²⁴ The following seven corporations entered into FCPA settlements with the DOJ, SEC, or both in 2022: KT Corporation, Stericycle, Inc., Glencore International AG, Tenaris S.A., GOL Linhas Aéreas S.A., Oracle Corporation, and ABB Ltd. See WilmerHale, *2022 Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>. The four companies that entered into FCPA settlements in 2021 were Deutsche Bank Aktiengesellschaft, Amec Foster Wheeler Limited, WPP plc, and Credit Suisse Group AG. See WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/en/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>.

¹²⁵ U.S. Department of Justice, Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, JUSTICE MANUAL § 9-47.120 (2023); <https://www.justice.gov/d9/pages/attachments/2023/01/17/criminal-division-corporate-enforcement-policy-january-2023.pdf>; see also WilmerHale, *DOJ Announces Updates to Corporate Enforcement Policy* (Jan. 18, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230118-doj-announces-updates-to-corporate-enforcement-policy>.

¹²⁶ U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

¹²⁷ U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

¹²⁸ U.S. Department of Justice Press Release No. 23-1072: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>.

¹²⁹ See Acting Assistant Att'y Gen. Nicole M. Argentieri, DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

“consistent with local labor laws.”¹³⁰ The Corficolombiana resolution also demonstrates how the pilot program may be applied in a coordinated resolution setting.

3. SEC’s Continued Reliance on Internal Accounting Controls

In 2023, the SEC charged more companies for FCPA violations than the DOJ—nine companies settled with the SEC¹³¹ compared to six that settled with the DOJ.¹³² This difference may be due, in part, to the fact that the SEC uses a civil burden of proof that is lower than the DOJ’s criminal standard and also strictly enforces the FCPA’s civil internal accounting controls provisions against issuers, meaning that there is no materiality threshold and no scienter or intent requirement. Because of this, SEC civil resolutions involving internal accounting controls violations have a lower burden of proof and often rely, for example, on allegations relating to insufficient due diligence or other controls weaknesses. Matters resolved solely with the SEC are also typically settled on a neither-admit-nor-deny basis.

Notably, in 2023, the SEC charged three companies—Philips, 3M, and Clear Channel—with violations of the internal accounting controls and the books and records provisions of the FCPA in association with conduct in China.¹³³ All three cases cite internal controls blind spots at the companies’ Chinese subsidiaries. According to settlement agreements, Philips did not enforce certain due diligence and training procedures,¹³⁴ 3M overlooked falsified documents,¹³⁵ and Clear Channel did not implement proper internal controls after internal auditors identified red flags.¹³⁶

4. Continued Cross-Border Cooperation with Foreign Authorities

As referenced above, two corporate resolutions announced in 2023 by U.S. authorities—Corficolombiana and Freepoint Commodities LLC—involved coordinated resolutions with foreign authorities. While 2023 marked a downturn in the number of cross-border resolutions typically announced annually—for example, in contrast, the DOJ

¹³⁰ Acting Assistant Att’y Gen. Nicole M. Argentieri, DOJ, Remarks at the American Bar Association 10th Annual London White Collar Crime Institute (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹³¹ The companies that settled with the SEC in 2023 were Albemarle, Rio Tinto, Flutter, Frank’s International, Koninklijke Philips N.V., Gartner, Corficolombiana, 3M Company, and Clear Channel Outdoor Holdings.

¹³² The companies that settled with the DOJ in 2023 were Albemarle and Corficolombiana, both of which also settled with the SEC; Ericsson, which agreed to pay an additional \$206 million in connection with its 2019 FCPA enforcement action after the DOJ alleged a breach of its 2019 DPA; Tysers Insurance Brokers Limited; H.W. Wood Limited; and Freepoint.

¹³³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

¹³⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411, ¶ 13 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

¹³⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581, ¶ 16 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>.

¹³⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶¶ 19-25 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

coordinated with five foreign authorities in 2022¹³⁷—it demonstrated that coordination between the United States and foreign authorities continues to remain a hallmark of corporate anti-corruption enforcement.

B. Notable Resolutions

1. Resolutions with the DOJ

a. Ericsson

In March 2023, Ericsson, a multinational telecommunications company headquartered in Sweden, agreed to plead guilty and pay more than \$206 million in penalties as a result of the breach of its 2019 FCPA DPA.¹³⁸

Ericsson's 2019 DPA arose out of allegations that the company had engaged in a scheme between 2000 and 2016 to improperly record profits amounting to millions of dollars in multiple countries.¹³⁹ In 2023, the DOJ found that Ericsson violated the terms of the DPA by failing to truthfully disclose all factual information and evidence related to bribery schemes in Djibouti and China, by failing to promptly report and disclose evidence and allegations of conduct related to its business activities in Iraq that may constitute a violation of the FCPA, and other potential violations of the FCPA.¹⁴⁰

In addition to paying the DOJ a \$206 million fine for violating the 2019 DPA, Ericsson pleaded guilty to the initial offenses with which it was charged in 2019.¹⁴¹ Ericsson also agreed to extend its monitorship for an additional year,

¹³⁷ U.S. Department of Justice Press Release No. 22-1383: Honeywell UOP to Pay Over \$160 Million to Resolve Foreign Bribery Investigations in U.S. and Brazil (Dec. 19, 2022), <https://www.justice.gov/opa/pr/honeywell-uop-pay-over-160-million-resolve-foreign-bribery-investigations-us-and-brazil>; U.S. Department of Justice Press Release No. 22-1296: ABB Agrees to Pay Over \$315 Million to Resolve Coordinated Global Foreign Bribery Case (Dec. 2, 2022), <https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case>; U.S. Department of Justice Press Release No. 22-978: GOL Linhas Aéreas Inteligentes S.A. Will Pay Over \$41 Million in Resolution of Foreign Bribery Investigations in the United States and Brazil (Sept. 15, 2022), <https://www.justice.gov/opa/pr/gol-linhas-reas-inteligentes-sa-will-pay-over-41-million-resolution-foreign-bribery>; U.S. Department of Justice Press Release No. 22-554: Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes (May 24, 2022), <https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes>; U.S. Department of Justice Press Release No. 22-401: Stericycle Agrees to Pay Over \$84 Million in Coordinated Foreign Bribery Resolution (Apr. 20, 2022), <https://www.justice.gov/opa/pr/stericycle-agrees-pay-over-84-million-coordinated-foreign-bribery-resolution>.

¹³⁸ U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

¹³⁹ U.S. Department of Justice Press Release No. 19-1360: Ericsson Agrees to Pay Over \$1 Billion to Resolve FCPA Case (Dec. 6, 2019), <https://www.justice.gov/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case>.

¹⁴⁰ Plea Agreement, *United States v. Telefonaktiebolaget LM Ericsson*, No. 19-CR-884, ¶ 3 (S.D.N.Y. Mar. 20, 2023), <https://www.justice.gov/media/1283586/dl?inline>; U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

¹⁴¹ The plea agreement also cited books and records and internal accounting controls violations in Djibouti, China, Vietnam, Indonesia, and Kuwait. Plea Agreement to Judgment, *United States v. Telefonaktiebolaget LM Ericsson*, No. 19-CR-00884, ¶¶ 1-2 (S.D.N.Y. Mar. 30, 2023); U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

into 2025.¹⁴² Ericsson's guilty plea signals that the DOJ will aggressively enforce disclosure provisions in DPAs, even when the described misconduct extends beyond the underlying conduct that led to the DPA in the first place, thus underscoring the need for companies subject to DPAs to demonstrate full cooperation and transparency.¹⁴³

b. Freepoint

In December 2023, Freepoint Commodities LLC (Freepoint), a Connecticut-based commodities trading company, entered into a DPA to resolve anti-bribery charges brought by the DOJ arising out of the company's involvement in a bribery scheme targeting Brazilian officials at *Petróleo Brasileiro S.A. (Petrobras)*, the Brazilian state-controlled oil company.¹⁴⁴

The DOJ alleged that, between approximately 2012 and 2018, Freepoint and its co-conspirators bribed Petrobras officials in exchange for confidential information regarding competitors' bids and pricing.¹⁴⁵ To conceal their actions, Freepoint and its co-conspirators used coded language, encrypted messaging apps, and sham negotiations designed "to give the appearance of legitimacy to trades between Petrobras and Freepoint."¹⁴⁶ Funds for the bribes were funneled through a middleman, who laundered the money via offshore accounts and shell companies.¹⁴⁷ Freepoint

¹⁴² U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

¹⁴³ U.S. Attorney Damian Williams for the Southern District of New York was quoted in connection with Ericsson's guilty plea: "Ericsson engaged in significant FCPA violations and made an agreement with the Department of Justice to clean up its act. The company's breach of its obligations under the DPA indicate that Ericsson did not learn its lesson, and it is now facing a steep price for its continued missteps. As Ericsson's anticipated guilty plea makes abundantly clear, the Southern District of New York will hold to account companies that fail to live up to obligations to root out and voluntarily report their misconduct to the Department of Justice." U.S. Department of Justice Press Release No. 23-239: Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

¹⁴⁴ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁴⁵ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶¶ 18-36 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁴⁶ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 26 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁴⁷ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶¶ 13-14, 35-36 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

benefited by over \$30 million from the corrupt scheme.¹⁴⁸ Notably, the unlawful conduct was first initiated by individuals, prior to their hiring by Freepoint, and continued into the individuals' employment with the company.¹⁴⁹ The DOJ also recently charged these individuals in their personal capacities.¹⁵⁰

In a criminal information, filed in U.S. District Court for the District of Connecticut, prosecutors charged the company with violation of the FCPA's anti-bribery provision.¹⁵¹ Freepoint's three-year DPA includes a criminal penalty of \$68 million and forfeiture of approximately \$30.5 million.¹⁵² Additionally, the company will disgorge over \$7.6 million to the Commodity Futures Trading Commission (CFTC) as part of a related action.¹⁵³ The DOJ will credit a portion of the penalty against payments to Brazilian authorities for related conduct and 25% of the forfeiture against the disgorgement paid to the CFTC.¹⁵⁴ In addition, the DOJ considered the severity of Freepoint's actions and its subsequent remedial efforts, granting a 15% discount on the applicable fine range due to the company's

¹⁴⁸ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 37 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁴⁹ In a statement posted on its website, Freepoint highlighted that the "resolutions...stem from activity by individuals that commenced prior to their joining Freepoint and was inconsistent with Freepoint's values and a breach of our zero-tolerance for corruption... The individuals involved are no longer associated with the company." Mengqi Sun, *Freepoint Commodities to Pay \$98 Million to Settle Criminal Foreign Bribery Probe*, WALL ST. J. (Dec. 24, 2023), <https://www.wsj.com/articles/freepoint-commodities-to-pay-98-million-to-settle-criminal-foreign-bribery-probe-ea95e3d2>; Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 20 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; Gaspard Le Dem, *Freepoint Commodities to pay \$106 million to US authorities over Petrobras bribery scheme*, GLOBAL INVESTIGATIONS REV. (Dec. 14, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/freepoint-commodities-pay-106-million-us-authorities-over-petrobras-bribery-scheme>.

¹⁵⁰ U.S. Department of Justice Press Release No. 23-933: Executive Charged in International Oil and Gas Trading Bribery and Money Laundering Scheme (Aug. 29, 2023), <https://www.justice.gov/opa/pr/executive-charged-international-oil-and-gas-trading-bribery-and-money-laundering-scheme>.

¹⁵¹ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 1 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁵² Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 4 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁵³ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 4 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁵⁴ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶¶ 9, 11 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

cooperation¹⁵⁵ and measures taken to address the misconduct.¹⁵⁶ The DOJ noted that, while Freepoint cooperated with the investigation, in its initial phases, the company's cooperation was limited in degree and impact and was largely reactive.¹⁵⁷ This resolution demonstrates the extent to which companies will be held liable under the FCPA for unlawful conduct of their employees, even when that behavior began prior to the hiring of those employees, so long as the unlawful conduct continues during the period of employment. It also illustrates the DOJ's commitment to rewarding firms that both cooperate during ongoing investigations and implement substantial compliance reforms.

c. Tysers and H.W. Wood

In November 2023, two British reinsurance brokers, Tysers and H.W. Wood, settled with the DOJ, admitting to violations of the anti-bribery provisions of the FCPA involving bribes paid to officials at Ecuadorian state-owned insurance companies.¹⁵⁸ Court filings in a Florida district court revealed that, between 2013 and 2017, both Tysers and H.W. Wood, via employees and third-party agents, paid bribes to the then-chairman of two Ecuadorian state-owned insurance companies and other Ecuadorian officials in order to secure business advantages with the state-

¹⁵⁵ Freepoint's cooperation with the DOJ included "(i) promptly and thoroughly responding to requests by the Fraud Section and the Office by producing and summarizing relevant documents and other information; (ii) engaging in significant efforts to aggregate and analyze complex financial information and trade data for more than 4,000 transactions; and (iii) making Company officers and employees available for interviews, and arranging separate counsel where appropriate." Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 4 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁵⁶ Freepoint engaged in remedial measures, including "(i) conducting an analysis of the causes of the underlying conduct and undertaking appropriate remediation to address those root causes and taking additional steps to improve its compliance program, including by retaining an advisory firm to evaluate its third-party compliance program; (ii) overhauling its third-party compliance and risk management program, including through the implementation of enhanced risk-based due diligence, screening, ongoing monitoring and oversight procedures, and the implementation of FCPA training for third-party agents; (iii) reducing the use of third-party intermediaries; (iv) implementing a global agent onboarding and tracking procedure; (v) strengthening its corporate governance and risk management structures, including through the utilization of data and metrics to evaluate risk, enhancing the independence and stature of its compliance function, and hiring additional, experienced compliance personnel; (vi) updating the Company's global anti-bribery and corruption policy to include FCPA red flags; (vii) implementing a process for reporting and investigating allegations of misconduct; and (viii) conducting testing of its third-party compliance program." Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 4 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁵⁷ Deferred Prosecution Agreement, *United States of America v. Freepoint Commodities LLC.*, No. 23-CR-00224, Attachment A ¶ 4 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/media/1329266/dl?inline>; U.S. Department of Justice Press Release No. 23-1424: Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case>.

¹⁵⁸ Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No. 23-CR-20414 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No. 23-CR-20414, Attachment A (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

owned insurance firms.¹⁵⁹ The bribes were routed through accounts in Florida and arranged partly through emails sent from and meetings conducted in Florida.¹⁶⁰ H.W. Wood internal communications referred to these bribes as “local acquisition costs” for “local people who have given us the opportunity to get these public businesses”;¹⁶¹ Tysers communications, meanwhile, referred to the bribes as “local obligations” and “a commitment [Tysers] must necessarily meet.”¹⁶² Tysers and H.W. Wood paid \$20.3 million and \$7.9 million, respectively, in commissions to an intermediary company that facilitated the bribes.¹⁶³ As a result of the scheme, Tysers and H.W. Wood retained commissions of about \$10.5 million and about \$2.3 million, respectively.¹⁶⁴

Tysers agreed to pay \$46.5 million, including penalties and disgorgement, through a three-year DPA.¹⁶⁵ H.W. Wood likewise entered a three-year DPA, agreeing to pay a reduced criminal penalty of \$508,000 due to the company’s distressed financial condition.¹⁶⁶ Both companies received a 25% reduction from the bottom of the range under the

¹⁵⁹ Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, Attachment A ¶¶ 18-27 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414 ¶¶ 18-25 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

¹⁶⁰ Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, Attachment A ¶¶ 18-27 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414, Attachment A ¶¶ 18-25 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

¹⁶¹ Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414, Attachment A ¶¶ 41, 52, 53 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>.

¹⁶² Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, Attachment A ¶¶ 34, 43 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>.

¹⁶³ Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, ¶ Attachment A 20 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414, Attachment A ¶ 20 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

¹⁶⁴ Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, ¶ Attachment A 20 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414, ¶ 20 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

¹⁶⁵ Tysers agreed to pay a \$36,000,000 monetary penalty and \$10,589,275 in forfeiture. Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, Attachment B ¶ 1 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

¹⁶⁶ Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414, Attachment B ¶ 1 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

U.S. Sentencing Guidelines due to their timely remedial actions¹⁶⁷ and cooperation with the DOJ investigation.¹⁶⁸ This pair of resolutions illustrates the DOJ's willingness to reward firms that engage in timely remedial action, as well as to consider a company's financial health in issuing penalties.

2. Resolutions with both the DOJ and the SEC

a. Albemarle

In September 2023, Albemarle, a chemicals manufacturing company based in North Carolina, settled charges by the DOJ and SEC alleging that Albemarle violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA, which culminated in a three-year NPA with the DOJ and a cease-and-desist order with the SEC.¹⁶⁹ Albemarle also agreed to pay more than \$218 million to U.S. authorities, including a \$98.2 million criminal penalty to the DOJ and \$103.6 million in disgorgement and prejudgment interest to the SEC.¹⁷⁰ In light of the criminal fine, the SEC did not impose a civil penalty.

¹⁶⁷ These remedial actions included (i) personnel changes, (ii) termination of relationships with the involved intermediary company, and (iii) comprehensive enhancements to their compliance procedures, such as new training programs, updated policies, and improved payment processes for third-parties. Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, ¶¶ 4, 8 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414, ¶¶ 4, 8 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>; U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>.

¹⁶⁸ Cooperation included "(i) meeting the government's requests promptly; (ii) endeavoring to make foreign-based employees available for interviews; (iii) collecting and producing voluminous relevant documents to the government, including documents located outside the United States; (iv) making several detailed factual presentations to the government and conducting and producing financial analyses of voluminous transactions; and (v) timely accepting responsibility and reaching a prompt resolution." U.S. Department of Justice Press Release No. 23-1319: British Reinsurance Brokers Resolve Bribery Investigations (Nov. 20, 2023), <https://www.justice.gov/opa/pr/british-reinsurance-brokers-resolve-bribery-investigations>; Deferred Prosecution Agreement, *United States of America v. Tysers Insurance Brokers Ltd.*, No 23-CR-20414, ¶¶ 4, 8 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325796/dl?inline>; Deferred Prosecution Agreement, *United States of America v. H.W. Wood Ltd.*, No 23-CR-20414, ¶¶ 4, 8 (S.D. Fla. Nov. 20, 2023), <https://www.justice.gov/media/1325801/dl?inline>.

¹⁶⁹ Non-Prosecution Agreement between the U.S. Department of Justice and Albemarle Corp. (Sept. 28, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>; U.S. Department of Justice Press Release No. 23-1072: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>; U.S. Securities and Exchange Commission Press Release No. 2023-209: Albemarle Corp. to Pay SEC More Than \$103 Million to Settle FCPA Violations (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-209>.

¹⁷⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>; U.S. Securities and Exchange Commission Press Release No. 2023-209: Albemarle Corp. to Pay SEC More Than \$103 Million to Settle FCPA Violations (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-209>.

Albemarle admitted to paying bribes to government officials between 2009 and 2017 to secure and maintain contracts with state-owned oil refineries in Vietnam, Indonesia, and India.¹⁷¹ The DOJ and SEC alleged that (1) in Vietnam, Albemarle secured contracts with two state-owned oil refineries using a third-party salesperson who bribed government officials and manipulated bid requirements in favor of the company;¹⁷² (2) in Indonesia, Albemarle was explicitly informed it would need to pay bribes but nonetheless engaged a third-party agent to secure business with a state-owned company;¹⁷³ and (3) in India, the company maintained its catalyst business with a state-owned oil firm by making bribe payments to avoid being blacklisted.¹⁷⁴ Per the DOJ, these corrupt practices resulted in profits of approximately \$98.5 million for Albemarle.¹⁷⁵

The SEC, additionally, indicated that Albemarle's internal audit reports in 2013, 2015, and 2016 identified numerous deficiencies within Albemarle's internal accounting controls regarding the company's use of third-party intermediaries.¹⁷⁶ Despite Albemarle's hiring of compliance staff, reduction of the number of sales agents and distributors with no contracts, and implementation of software to aid in third-party onboarding and contracting, the SEC indicated that Albemarle failed to establish and sustain an effective system of internal accounting controls concerning commission rates and deviations from agreed contractual rates.¹⁷⁷ Moreover, the SEC alleged that

¹⁷¹ Non-Prosecution Agreement between the U.S. Department of Justice and Albemarle Corp., Attachment A ¶ 20 (Sept. 28, 2023), <https://www.justice.gov/d9/2023-09/alb-nga-9.28.23-fully-executed.pdf>; U.S. Department of Justice Press Release No. 23-1072: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763, ¶¶ 1, 10, 14, 21 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>; U.S. Securities and Exchange Commission Press Release No. 2023-209: Albemarle Corp. to Pay SEC More Than \$103 Million to Settle FCPA Violations (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-209>.

¹⁷² Non-Prosecution Agreement between the U.S. Department of Justice and Albemarle Corp., Attachment A ¶¶ 20-44 (Sept. 28, 2023), <https://www.justice.gov/d9/2023-09/alb-nga-9.28.23-fully-executed.pdf>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763, ¶¶ 10-13 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>.

¹⁷³ Non-Prosecution Agreement between the U.S. Department of Justice and Albemarle Corp., Attachment A ¶¶ 45-56 (Sept. 28, 2023), <https://www.justice.gov/d9/2023-09/alb-nga-9.28.23-fully-executed.pdf>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763, ¶¶ 21-25 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>.

¹⁷⁴ Non-Prosecution Agreement between the U.S. Department of Justice and Albemarle Corp., Attachment A ¶ 20 (Sept. 28, 2023), <https://www.justice.gov/d9/2023-09/alb-nga-9.28.23-fully-executed.pdf>; U.S. Department of Justice Press Release No. 23-1072: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763, ¶¶ 14-19 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>.

¹⁷⁵ Non-Prosecution Agreement between the U.S. Department of Justice and Albemarle Corp., Attachment A ¶ 20 (Sept. 28, 2023), <https://www.justice.gov/d9/2023-09/alb-nga-9.28.23-fully-executed.pdf>; U.S. Department of Justice Press Release No. 23-1072: Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation>.

¹⁷⁶ These reports pointed out instances where "sales agents and distributors were paid . . . despite incomplete due diligence; despite a lack of an executed contract; despite having a contract that lacked required anti-corruption provisions; and at rates higher than those provided for by contract—all in contravention of Albemarle's policies and procedures." Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763, ¶ 7 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>.

¹⁷⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763, ¶ 8 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>.

Albemarle overlooked several red flags regarding its third-party intermediaries, who it hired “despite elevated risks of bribery and without reasonable assurance that [Albemarle’s] payments compensated legitimate services.”¹⁷⁸

As noted above in Section II.C, Albemarle was the first company to benefit from the DOJ pilot program on compensation incentives and clawbacks,¹⁷⁹ receiving a \$763,453 reduction of its penalty for bonuses that the company withheld from relevant employees.¹⁸⁰ The Albemarle resolution underscores the crucial need to establish strong procedures for addressing adverse internal audits and highlights the importance of risk-based due diligence for third-party intermediaries.

b. Corficolombiana

As mentioned above, in August 2023, the DOJ and SEC announced parallel resolutions with Corficolombiana, a Colombian financial services institution,¹⁸¹ and its parent, Grupo Aval S.A., a U.S. issuer, in which Corficolombiana and Grupo Aval paid over \$80 million to resolve the investigation with U.S. and Colombian authorities.¹⁸²

Per the DOJ and SEC, Corficolombiana conspired with its business partner, Odebrecht S.A. (Odebrecht), to pay more than \$23 million in bribes to Colombian officials between 2012 and 2015 in an attempt to win additional contracts for an infrastructure project.¹⁸³ The DOJ and SEC claimed that, after Corficolombiana and Odebrecht won the initial bid for a highway construction project in 2009, the companies began lobbying the Colombian government in 2012 to add a road extension project known as the Ocaña-Gamarra Extension to their contract, and that they conspired to pay

¹⁷⁸ For example, one intermediary in China, whose principal was related to a senior official at a Chinese state-owned refinery, did not have a website and was registered as a corporate entity in China only a few weeks before Albemarle hired it—circumstances which, according to the SEC, should have triggered additional due diligence procedures prompting an evaluation of the intermediary’s professional profile. Order Instituting Cease-and-Desist Proceedings, *In the Matter of Albemarle Corp.*, Rel. No. 98622, File No. 3-21763, ¶ 27 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>.

¹⁷⁹ Gwen Romack, *Albemarle Resolutions Bring First Application of DOJ’s Compensation Incentives and Clawbacks Pilot Program*, ANTI-CORRUPTION REPORT, Nov. 8, 2023, <https://www.anti-corruption.com/20292556/albemarle-resolutions-bring-first-application-of-doj-s-compensation-incentives-and-clawbacks-pilot-program.shtml>.

¹⁸⁰ Non-Prosecution Agreement between the U.S. Department of Justice and Albemarle Corp., ¶ 3 (Sept. 28, 2023), <https://www.justice.gov/d9/2023-09/alb-npa-9.28.23-fully-executed.pdf>.

¹⁸¹ U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>; U.S. Securities and Exchange Commission Press Release No. 2023-151; Colombian Conglomerate Grupo Aval and Its Bank Subsidiary to Pay \$40 Million to Settle FCPA Violations (Aug. 10, 2023), <https://www.sec.gov/news/press-release/2023-151>.

¹⁸² U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>; U.S. Securities and Exchange Commission Press Release No. 2023-151; Colombian Conglomerate Grupo Aval and Its Bank Subsidiary to Pay \$40 Million to Settle FCPA Violations (Aug. 10, 2023), <https://www.sec.gov/news/press-release/2023-151>.

¹⁸³ U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>; U.S. Securities and Exchange Commission Press Release No. 2023-151: Colombian Conglomerate Grupo Aval and Its Bank Subsidiary to Pay \$40 Million to Settle FCPA Violations (Aug. 10, 2023), <https://www.sec.gov/news/press-release/2023-151>. See also Order Instituting Cease-and-Desist Proceedings, *In the Matter of Grupo Aval Acciones Y Valores S.A. and Corporacion Financiera Colombiana S.A.*, Rel. No. 98103, File No. 3-21559 (Aug. 10, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98103.pdf>.

bribes to obtain the project.¹⁸⁴ Between 2012 and 2014, Corficolombiana's intermediaries, who lobbied the Colombian government on Corficolombiana's behalf, allegedly paid bribes to Colombian government officials.¹⁸⁵ In 2014, Colombian officials amended Corficolombiana's contract to include the Ocaña-Gamarra Extension without a public bidding process.¹⁸⁶ The DOJ and SEC asserted that Corficolombiana, which earned approximately \$28.63 million in profits from this contract,¹⁸⁷ offered with its co-conspirators to pay more than \$23 million in bribes to government officials.¹⁸⁸

Corficolombiana, which was majority-owner and controlled by Grupo Aval, agreed to settle charges with DOJ that it violated the anti-bribery provisions of the FCPA by agreeing to pay \$40 million to the DOJ (half of which was credited to a payment to Colombian authorities).¹⁸⁹ Under its DPA with the DOJ, Corficolombiana additionally agreed to forfeit its proceeds of \$28.63 million from the bribery scheme.¹⁹⁰ The DPA also requires Corficolombiana to implement a robust compliance program and report on its remediation efforts to the DOJ for a period of three years.¹⁹¹ The SEC charged Corficolombiana under the anti-bribery provisions as an agent of Grupo Aval and charged Grupo Aval under

¹⁸⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Grupo Aval Acciones Y Valores S.A. and Corporacion Financiera Colombiana S.A.*, Rel. No. 98103, File No. 3-21559, ¶ 8 (Aug. 10, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98103.pdf>; Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-CR-00262, Attachment A ¶ 24 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>.

¹⁸⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Grupo Aval Acciones Y Valores S.A. and Corporacion Financiera Colombiana S.A.*, Rel. No. 98103, File No. 3-21559, ¶¶ 9-10 (Aug. 10, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98103.pdf>; Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-CR-00262, Attachment A ¶¶ 25-28 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>.

¹⁸⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Grupo Aval Acciones Y Valores S.A. and Corporacion Financiera Colombiana S.A.*, Rel. No. 98103, File No. 3-21559, ¶ 11 (Aug. 10, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98103.pdf>.

¹⁸⁷ Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-CR-00262, Attachment A ¶ 22 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>; U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>; U.S. Securities and Exchange Commission Press Release No. 2023-151: Colombian Conglomerate Grupo Aval and Its Bank Subsidiary to Pay \$40 Million to Settle FCPA Violations (Aug. 10, 2023), <https://www.sec.gov/news/press-release/2023-151>.

¹⁸⁸ Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-CR-00262, Attachment A ¶ 16 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>.

¹⁸⁹ Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-CR-00262, ¶¶ 8-10 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>; U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>

¹⁹⁰ Corficolombiana received a forfeiture credit of \$28.63 million in connection with its resolution with the SEC and was not required to pay a money judgment of forfeiture. Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-CR-00262, ¶¶ 9-10 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>.

¹⁹¹ Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-CR-00262, Attachment A ¶¶ 13-16 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>.

the books and records and internal accounting controls provisions.¹⁹² Grupo Aval paid \$40 million to the SEC in disgorgement and prejudgment interest.¹⁹³

The Corficolombiana resolution was the first FCPA case announced under the January 2023 revised CEP.¹⁹⁴ In an October 2023 speech, Acting AAG Argentieri highlighted several actions Corficolombiana took to remedy misconduct that the DOJ identified, including conducting a root cause analysis of the misconduct, taking actions to enhance its corporate governance and controls at joint venture entities, and greatly remediating its compliance program, in part, by establishing a disciplinary process overseen by a cross-functional ethics committee.¹⁹⁵ In recognition of Corficolombiana's disclosure and compliance efforts, the DOJ awarded a 30% penalty reduction from the bottom of the U.S. Sentencing Guidelines range.¹⁹⁶

Finally, as mentioned above, Corficolombiana also implemented new compliance requirements per the DOJ's Compensation Incentives and Clawbacks Pilot Program and pledged to implement compensation and bonus systems that are "consistent with local labor laws."¹⁹⁷ Unlike Albemarle, however, Corficolombiana did not receive any reductions in penalties under the second component of the pilot program, which considers possible fine reductions for companies that withhold bonuses from qualifying employees. The Corficolombiana resolution demonstrates the DOJ's willingness to credit companies that not only substantially cooperate with ongoing investigations, but also undertake significant compliance reforms to remedy misconduct.

¹⁹² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Grupo Aval Acciones Y Valores S.A. and Corporacion Financiera Colombiana S.A.*, Release No. 98103, File No. 3-21559 (Aug. 8, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98103.pdf>.

¹⁹³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Grupo Aval Acciones Y Valores S.A. and Corporacion Financiera Colombiana S.A.*, Release No. 98103, File No. 3-21559 (Aug. 8, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98103.pdf>.

¹⁹⁴ Acting Assistant Att'y Gen. Nicole M. Argentieri, DOJ, *Remarks at the American Bar Association 10th Annual London White Collar Crime Institute* (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁹⁵ Acting Assistant Att'y Gen. Nicole M. Argentieri, DOJ, *Remarks at the American Bar Association 10th Annual London White Collar Crime Institute* (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

¹⁹⁶ Acting Assistant Att'y Gen. Nicole M. Argentieri, DOJ, *Remarks at the American Bar Association 10th Annual London White Collar Crime Institute* (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>; U.S. Department of Justice Press Release No. 23-871: Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>; U.S. Securities and Exchange Commission Press Release No. 2023-151: Colombian Conglomerate Grupo Aval and Its Bank Subsidiary to Pay \$40 Million to Settle FCPA Violations (Aug. 10, 2023), <https://www.sec.gov/news/press-release/2023-151>.

¹⁹⁷ Acting Assistant Att'y Gen. Nicole M. Argentieri, DOJ, *Remarks at the American Bar Association 10th Annual London White Collar Crime Institute* (Oct. 10, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar> ("We appreciate that relevant labor and employment laws and other laws across the world vary, and so the pilot program also takes that into account. As the language in our resolutions and policies make clear, it is subject to such laws.").

3. Resolutions with the SEC

a. Natural Resource Company

In March 2023, the SEC brought books and records and internal accounting controls charges against a global mining and metals company headquartered in Australia and the UK, for violations of the FCPA involving an alleged bribery scheme related to its business in Guinea. Without admitting to or denying the SEC's findings, the company agreed to settle the SEC's charges by paying a \$15 million civil penalty.¹⁹⁸

The SEC's cease and desist order alleged that, in 2011, the company engaged a French investment banker and close friend of a former high-ranking Guinean government official as a consultant to help with the retention of mining rights in the Simandou region, one of the world's largest iron-ore deposits. Acting as the company's agent, the banker allegedly offered, and attempted to make, an improper payment of at least \$822,000 to a Guinean government official. Further, the SEC found that payments to the consultant were not accurately reflected in the company's books and records and that the company had insufficient internal accounting controls in place to detect or prevent the misconduct.¹⁹⁹

The SEC alleged that the company paid the consultant \$10.5 million in two lump sums, notwithstanding several warning signs, including that: (i) the consultant was hired prior to having conducted adequate due diligence required for retaining third parties; (ii) the consultant initiated his representation without a written agreement defining the scope of his services or deliverables; (iii) internal emails referenced the consultant's friendship with the senior government official as a reason for hiring him; (iv) the consultant had no direct work experience relating to the mining business; (v) in email correspondence, the consultant repeatedly mentioned his relationship with the senior government official, and it was unclear whether a portion of his fee would be paid to the senior government official; (vi) at the suggestion of the senior government official, the consultant requested payment as a lump sum, which the company paid, despite internally acknowledging the bad optics of the payment.

This settlement highlights the importance of conducting robust due diligence prior to hiring third-party intermediaries, including an assessment of the parties' personal connections to government officials and their expertise in the particular industry area. It also serves as a warning against compensating third-party intermediaries with lump sum payments, where the payments are not tied to concrete deliverables. Since disgorgement was not required as part of the settlement, this resolution serves as a reminder that FCPA enforcement does not depend on the success or profitability of the alleged bribery scheme.

¹⁹⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Rio Tinto plc*, Rel. No. 97049, File No. 3-21335 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97049.pdf>; U.S. Securities and Exchange Commission Press Release No. 2023-46: SEC Charges Rio Tinto plc with Bribery Controls Failures (Mar. 6, 2023), <https://www.sec.gov/news/press-release/2023-46>.

¹⁹⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Rio Tinto plc*, Rel. No. 97049, File No. 3-21335, ¶¶ 1, 15, 17, 18 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97049.pdf>; U.S. Securities and Exchange Commission Press Release No. 2023-46: SEC Charges Rio Tinto plc with Bribery Controls Failures (Mar. 6, 2023), <https://www.sec.gov/news/press-release/2023-46>.

b. Flutter Entertainment

Also in March 2023, the SEC charged Flutter, an Ireland-based global gaming and sports betting company, with books and records and internal accounting controls violations under the FCPA.²⁰⁰ The Stars Group Inc. (Stars), another gaming and betting company that Flutter acquired in May 2020,²⁰¹ allegedly committed these violations through the use of third-party consultants in Russia to encourage the legalization of poker in Russia.²⁰² Flutter neither admitted nor denied these allegations and agreed to pay a civil penalty of \$4 million.²⁰³

The SEC's investigation alleged that Stars paid approximately \$8.9 million to Russian consultants between 2015 and 2020, during which time Stars' shares were registered with the SEC.²⁰⁴ According to the SEC, Stars operated PokerStars, one of the largest online poker websites in the world, and sought to expand operations in the Russian market, where poker was neither legal nor expressly prohibited.²⁰⁵ Stars allegedly reimbursed the Russian consultants for expenses that were paid to Russian officials and also reimbursed the consultants' payments to a Russian state agency overseeing internet censorship filters.²⁰⁶ The SEC alleged that Stars did not engage in sufficient due diligence when retaining and employing Russian consultants and that the company failed to maintain adequate records of its payments to the consultants.²⁰⁷

Notably, this resolution imposed liability on Flutter for inherited consultant relationships that were several steps removed from Flutter. Stars acquired PokerStars from the Oldford Group in 2014, also taking on Oldford's preexisting operations in Russia as well as several Russian consultants.²⁰⁸ Stars contacted the SEC and other regulators in 2016 following an internal assessment of potential improper payments, subsequently adopting a policy prohibiting

²⁰⁰ U.S. Securities and Exchange Commission Press Release No. 3-21330: SEC Charges PokerStars Parent Company with FCPA Violations (Mar. 6, 2023), <https://www.sec.gov/enforce/34-97044-s>.

²⁰¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶ 3 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²⁰² U.S. Securities and Exchange Commission Press Release No. 3-21330: SEC Charges PokerStars Parent Company with FCPA Violations (Mar. 6, 2023), <https://www.sec.gov/enforce/34-97044-s>.

²⁰³ U.S. Securities and Exchange Commission Press Release No. 3-21330: SEC Charges PokerStars Parent Company with FCPA Violations (Mar. 6, 2023), <https://www.sec.gov/enforce/34-97044-s>.

²⁰⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶ 1 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²⁰⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶¶ 4-5 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²⁰⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶ 15 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²⁰⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶ 7 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²⁰⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶ 4 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

payments to third parties without adequate risk-based due diligence and the CEO or general counsel's approval.²⁰⁹ However, Stars allegedly continued to make improper payments in violation of this new policy through 2020, including after it was acquired by Flutter.²¹⁰

Flutter cooperated with the SEC's investigation and took remedial steps to resolve the issue, ultimately terminating its relationships with the Russian consultants and pulling out of the Russian market altogether after Russia's invasion of Ukraine in 2022.²¹¹ This resolution emphasizes the need for careful assessment of the potential for inherited risk during acquisitions and the necessity of quickly remediating issues. As discussed in Section II.B, the DOJ recently announced a new safe harbor policy that could protect companies from liability for wrongdoing by companies they acquire or are in the process of acquiring if they remediate the misconduct and self-report to the DOJ.²¹² However, the SEC has not implemented a similar safe harbor provision, so following the DOJ's guidance may not avoid an SEC resolution in some cases. There is no public record of any DOJ investigation related to this matter as of January 2024.

c. Frank's International

In April 2023, the SEC announced a resolution with Frank's International, a Netherlands-based global oilfield services provider now known as Expro Group Holdings N.V., regarding violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA.²¹³ The SEC alleged that Frank's International had tried to increase its operations in offshore drilling blocks in Angola, but international oil companies with exploration and production rights would not contract with vendors, like Frank's International, that were disfavored by the state-owned oil company, Sonangol.²¹⁴ Frank's International's employees allegedly learned that Sonangol might reconsider its decision to hire Frank's International if Frank's International established a consulting company and paid some of the proceeds from the contract to the consulting company for the benefit of Sonangol officials.²¹⁵

²⁰⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶¶ 9-10 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²¹⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶¶ 9-10 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²¹¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.*, Rel. No. 97044, File No. 3-21330, ¶ 26 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97044.pdf>.

²¹² U.S. Department of Justice, Deputy Attorney General Lisa O. Monaco Announces New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>; see also WilmerHale, *DOJ Announces New Mergers & Acquisitions Safe Harbor Policy* (Oct. 5, 2023), <https://www.wilmerhale.com/insights/client-alerts/20231005-doj-announces-new-mergers-acquisitions-safe-harbor-policy>.

²¹³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶ 1 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²¹⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶¶ 9-10 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²¹⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶ 10 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

According to the SEC, instead of creating a consulting company, Frank's International engaged a local agent to assist the company in retaining Sonangol business without conducting proper due diligence or drawing up a contract.²¹⁶ The agent allegedly lacked the relevant technical background to effectively advocate on Frank's International's behalf but had personal relationships with Sonangol employees and was able to increase contact between Frank's International and Sonangol.²¹⁷ Frank's International allegedly paid the agent commissions between 2008 and 2014, despite the fact that local employees of Frank's International's subsidiary were aware of the high probability that the agent would use the funds to bribe Angolan government officials within Sonangol.²¹⁸ The SEC asserted that the agent did, in fact, divert funds paid to him by Frank's International to pay a Sonangol official to garner favor for the company's contract bids.²¹⁹ Separately, Frank's International allegedly also approved travel and entertainment benefits for the Sonangol official, including by obtaining a travel visa for the official on the false basis that he was a Frank's International employee.²²⁰

The SEC alleged that Frank's International began making payments to the local agent before becoming a publicly traded company, but continued to do so after becoming an issuer as defined under the FCPA.²²¹ The SEC also asserted that Frank's International failed to maintain adequate internal accounting controls over the payment of its agents.²²² As a result of this misconduct, Frank's International allegedly made a net profit of at least \$4 million from contracts with oil companies connected to Sonangol.²²³

Frank's International did not admit or deny these findings, but paid disgorgement and prejudgment interest of almost \$5 million, as well as a \$3 million civil penalty, and agreed to cease and desist from any future violations.²²⁴ The matter exemplifies the SEC's continued focus on companies' use of agents to engage in suspected foreign transactions, as well as ongoing scrutiny of benefits provided to foreign officials in the form of gifts, travel, or entertainment. There is no public record of a DOJ investigation related to this matter.

²¹⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶¶ 10-11 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²¹⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶ 11 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²¹⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶ 1 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²¹⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶¶ 1, 8, 9 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²²⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶ 19 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²²¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶ 8 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>; 15 U.S.C. §78dd-1(a).

²²² U.S. Securities and Exchange Commission Press Release No. 3-97397: SEC Charges Frank's International with FCPA Violations in Angola (Apr. 26, 2023), <https://www.sec.gov/enforce/34-97381-s>.

²²³ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Frank's International*, Rel. No. 97381, File No. 3-21397, ¶ 21 (Apr. 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97381.pdf>.

²²⁴ U.S. Securities and Exchange Commission Press Release No. 3-97397: SEC Charges Frank's International with FCPA Violations in Angola (Apr. 26, 2023), <https://www.sec.gov/enforce/34-97381-s>.

d. Koninklijke Philips N.V.

In May 2023, the SEC charged Philips, a Dutch medical device manufacturer, with violations of the books and records and internal accounting controls provisions of the FCPA in connection with its subsidiaries' sales of health technology equipment in China.²²⁵ The SEC's investigation alleged that Philips's employees and agents attempted to influence Chinese officials by engaging in improper bidding practices to push out competitors from public tenders and by offering special discounts to distributors under the assumption that the excess margins created could then be used to pay off government employees.²²⁶ The SEC alleged that Philips personnel provided funds to and collaborated with hospital administrators to promote the company's efforts to win procurement contracts²²⁷ and that Philips's internal accounting oversight measures were insufficient both to detect and address these transactions within the company's Chinese subsidiary and to discourage a company culture that had allowed the misconduct.²²⁸ The SEC estimated that Philips profited by approximately \$41 million from this misconduct.²²⁹ It is unclear why the SEC did not pursue an anti-bribery charge despite the allegations of payments to Chinese officials, although there may have been jurisdictional challenges.

Philips agreed to a settlement without admitting or denying the allegations, paying \$15 million in civil penalties and more than \$47 million in disgorgement and prejudgment interest.²³⁰ The SEC favorably considered Philips's cooperation with the investigation and efforts to remediate the issues identified through improved policies and internal controls and enhanced training.²³¹ The settlement requires Philips to continue monitoring these areas for misconduct and to report its findings back to the SEC for two years.²³²

The 2023 Philips settlement follows a 2013 SEC charge against Philips for similar misconduct in Poland between 1999 and 2007.²³³ In the SEC's press release regarding the 2023 settlement, FCPA Unit Chief Charles Cain warned that "[t]his matter highlights the need for companies to design and implement internal accounting controls sufficient

²²⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

²²⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411, ¶¶ 1-2 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

²²⁷ U.S. Securities and Exchange Commission Press Release No. 2023-92: Dutch Medical Supplier Philips to Pay More Than \$62 Million to Settle FCPA Charges (May 11, 2023), <https://www.sec.gov/news/press-release/2023-92>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411, ¶¶ 10-11 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

²²⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411, ¶¶ 12-13 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

²²⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411, ¶ 1 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

²³⁰ U.S. Securities and Exchange Commission Press Release No. 2023-92: Dutch Medical Supplier Philips to Pay More Than \$62 Million to Settle FCPA Charges (May 11, 2023), <https://www.sec.gov/news/press-release/2023-92>.

²³¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411, ¶¶ 20-21 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

²³² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Koninklijke Philips N.V.*, Rel. No. 97479, File No. 3-21411, ¶¶ 20-23 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf>.

²³³ U.S. Securities and Exchange Commission Press Release No. 2023-92: Dutch Medical Supplier Philips to Pay More Than \$62 Million to Settle FCPA Charges (May 11, 2023), <https://www.sec.gov/news/press-release/2023-92>.

for the scale of their business.”²³⁴ Cain also reflected that the misconduct in China occurred in spite of Philips’s remediation efforts in conjunction with the 2013 settlement.²³⁵ The 2023 settlement should caution companies that have previously been subject to FCPA enforcement that their remedial compliance measures may be subject to ongoing scrutiny, particularly when there is any suggestion of further violations. On May 13, 2023, Philips announced that the DOJ had closed its parallel investigation into the matter without pursuing charges against the company.²³⁶

e. Gartner, Inc.

In May 2023, Gartner, a Connecticut-based research and consulting company, settled anti-bribery, books and records, and internal accounting controls charges with the SEC on a neither-admit-nor-deny basis.²³⁷ The resolution arose after Gartner’s self-disclosures to the SEC, which followed South African press reports revealing Gartner’s relationship with a private information technology company that had close ties to the South African government.²³⁸ According to the SEC, when Gartner entered into sub-contracts with the information technology company, it knew or consciously disregarded the possibility that “all or part” of the money paid to the company would be used to induce South African government officials to award multi-million-dollar contracts to Gartner.²³⁹ To resolve this matter, Gartner consented to a cease-and-desist order and agreed to pay \$2.46 million, which consisted of \$856,764 in disgorgement and prejudgment interest as well as a \$1.6 million civil penalty.²⁴⁰

While Gartner’s internal FCPA risk assessments identified its relationships with public sector clients as potential “bribery red flags,” Gartner’s policies and procedures regarding its relationships with third-party consultants allegedly failed to properly address the risk of bribery.²⁴¹ For example, the SEC alleged that, at the time of the alleged infractions, Gartner lacked “risk-based screening procedures for hiring third party contractors, had no anti-corruption related vendor onboarding procedures, and lacked adequate monitoring procedures.”²⁴² Although the company

²³⁴ U.S. Securities and Exchange Commission Press Release No. 2023-92: Dutch Medical Supplier Philips to Pay More Than \$62 Million to Settle FCPA Charges (May 11, 2023), <https://www.sec.gov/news/press-release/2023-92>.

²³⁵ U.S. Securities and Exchange Commission Press Release No. 2023-92: Dutch Medical Supplier Philips to Pay More Than \$62 Million to Settle FCPA Charges (May 11, 2023), <https://www.sec.gov/news/press-release/2023-92>.

²³⁶ Philips, *Philips statement on recent settlement with the U.S. Securities and Exchange Commission* (May 13, 2023), <https://www.philips.com/a-w/about/news/archive/standard/news/press/2023/20230513-philips-statement-on-recent-settlement-with-the-u-s-securities-and-exchange-commission.html>.

²³⁷ U.S. Securities and Exchange Commission Press Release No. 3-21470: SEC Charges Gartner, Inc. with FCPA Violations in South Africa (May 26, 2023), <https://www.sec.gov/enforce/34-97609-s>.

²³⁸ Anna Bianca Roach, *Consulting firm to pay \$2.5 million for South African bribery*, GLOBAL INVESTIGATIONS REV. (May 30, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/consulting-firm-pay-25-million-south-african-bribery>.

²³⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Gartner, Inc.*, Rel. No. 97609, File No. 3-21470, ¶ 2 (May 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97609.pdf>.

²⁴⁰ U.S. Securities and Exchange Commission Press Release No. 3-21470: SEC Charges Gartner, Inc. with FCPA Violations in South Africa (May 26, 2023), <https://www.sec.gov/enforce/34-97609-s>.

²⁴¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Gartner, Inc.*, Rel. No. 97609, File No. 3-21470, ¶ 21 (May 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97609.pdf>.

²⁴² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Gartner, Inc.*, Rel. No. 97609, File No. 3-21470, ¶ 21 (May 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97609.pdf>.

previously reported that the DOJ also had opened an investigation into Gartner's activities in South Africa, there was no resolution to that matter as of January 2024.²⁴³

f. 3M Company

In August 2023, 3M, a Minnesota-based global manufacturer, agreed to pay \$6.5 million to resolve SEC allegations that it violated the books and records and internal accounting controls provisions of the FCPA.²⁴⁴ 3M agreed to the cease-and-desist order on a neither-admit-nor-deny basis and agreed to pay disgorgement and prejudgment interest totaling more than \$4.5 million and a civil penalty of \$2 million.²⁴⁵

The SEC alleged that employees of a wholly owned 3M subsidiary based in China (3M-China) allegedly colluded with China-based travel agencies to provide improper travel and entertainment to Chinese government officials.²⁴⁶ The SEC said that 3M-China arranged at least 24 trips for government officials employed by state-owned healthcare facilities to attend overseas conferences, educational events, and healthcare facility visits.²⁴⁷ 3M-China was also alleged to have created secret alternate itineraries for these trips, which included "guided tours, shopping visits, day trips to nearby sights[,] and other leisure activities."²⁴⁸ The goal of these trips was allegedly to induce the government officials to purchase 3M products, and the trips were improperly recorded in 3M's books as legitimate business expenses, without indicating that the trips included the various tourist activities listed above.²⁴⁹ According to the SEC, these tourism activities often conflicted with the purported business activities, which were held in English, although several of the government officials neither spoke English nor were provided with adequate translation services.²⁵⁰ The SEC alleged that 3M falsified internal compliance documents that either omitted mention of the tourist activities

²⁴³ Gartner, 2022 Annual Report (Feb. 16, 2023), at 16, <https://investor.gartner.com/static-files/0068f54d-317e-4690-adc8-6ec783449562>.

²⁴⁴ U.S. Securities and Exchange Commission Press Release No. 2023-160: SEC Charges 3M with Foreign Corrupt Practices Act Violations Relating to China Subsidiary (Aug. 25, 2023), <https://www.sec.gov/news/press-release/2023-160>.

²⁴⁵ U.S. Securities and Exchange Commission Press Release No. 2023-160: SEC Charges 3M with Foreign Corrupt Practices Act Violations Relating to China Subsidiary (Aug. 25, 2023), <https://www.sec.gov/news/press-release/2023-160>.

²⁴⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581, ¶¶ 1-2 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>.

²⁴⁷ U.S. Securities and Exchange Commission Press Release No. 2023-160: SEC Charges 3M with Foreign Corrupt Practices Act Violations Relating to China Subsidiary (Aug. 25, 2023), <https://www.sec.gov/news/press-release/2023-160>.

²⁴⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581, ¶ 8 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>.

²⁴⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581, ¶ 9 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>.

²⁵⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581, ¶ 7 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>.

or affirmatively denied their existence.²⁵¹ The SEC alleged that 3M-China benefited from these trips by at least a \$3.5 million boost to its sales.²⁵²

It is important to ensure that travel and hospitality expenditures are directly related to the promotion or demonstration of a company's products or services, that they are properly recorded, and that policies and procedures regarding the provision of travel and entertainment are implemented and extend across all subsidiary companies.²⁵³ In October 2023, 3M reported that the DOJ had closed its investigation into the company with no further action.²⁵⁴

g. Clear Channel Outdoor Holdings

In September 2023, the SEC charged Clear Channel, a Texas-headquartered company that specializes in out-of-home advertising, with violating the anti-bribery, books and records, and internal accounting controls provisions of the FCPA.²⁵⁵ Clear Channel agreed to a cease-and-desist order and paid a settlement of over \$26 million to the SEC on a neither-admit-nor-deny basis.²⁵⁶

Between 2005 and 2020, Clear Channel was the majority owner of Clear Media Limited (Clear Media), a Bermuda-incorporated holding company based in China.²⁵⁷ The SEC alleged that, between 2012 and 2017, Clear Media allegedly provided improper benefits to Chinese officials in order to obtain and renew concessions and advertising contracts.²⁵⁸ The benefits included expensive gifts, entertainment, and luxury travel.²⁵⁹

The SEC's order also indicated that Clear Media allegedly maintained an annual reserve that was solely used for entertaining government officials, consisting of approximately \$600,000 for "special funding" of ad hoc requests.²⁶⁰ Clear Media also allegedly developed an off-book cash fund dedicated to funding undisclosed consultants, who

²⁵¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581, ¶ 6 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>.

²⁵² Order Instituting Cease-and-Desist Proceedings, *In the Matter of 3M Company*, Rel. No. 98222, File No. 3-21581, ¶ 11 (Aug. 25, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98222.pdf>.

²⁵³ U.S. Department of Justice and U.S. Securities and Exchange Commission Publication: FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act (2d ed. 2020), <https://www.justice.gov/criminal-fraud/file/1292051/download>.

²⁵⁴ 3M Company, Form 10-Q (filed Oct. 24, 2023), at 52, [vhttps://investors.3m.com/financials/sec-filings/content/0000066740-23-000092/0000066740-23-000092.pdf](https://investors.3m.com/financials/sec-filings/content/0000066740-23-000092/0000066740-23-000092.pdf).

²⁵⁵ U.S. Securities and Exchange Commission Press Release No. 2023-206: SEC Charges Clear Channel Outdoor with FCPA Violations Relating to China Subsidiary (Sept. 28, 2023), <https://www.sec.gov/news/press-release/2023-206>.

²⁵⁶ U.S. Securities and Exchange Commission Press Release No. 2023-206: SEC Charges Clear Channel Outdoor with FCPA Violations Relating to China Subsidiary (Sept. 28, 2023), <https://www.sec.gov/news/press-release/2023-206>.

²⁵⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶ 5 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

²⁵⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶¶ 12-14 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

²⁵⁹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶¶ 12-14 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

²⁶⁰ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶ 15 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

helped Clear Media obtain and renew contracts with private and government customers.²⁶¹ Clear Media employees allegedly submitted falsified invoices and tax records, which the company used to justify cash payments to shell companies (which were described as “cleaning and maintenance” vendors in Clear Media’s systems) that served as intermediaries.²⁶²

During the relevant period, Clear Channel’s internal auditors identified various bribery-related concerns and internal accounting control deficiencies, but failed to ensure that the company addressed these concerns by implementing sufficient internal accounting controls.²⁶³ In addition, according to the SEC order, Clear Channel falsely characterized Clear Media’s improper payments as legitimate entertainment, “cleaning and maintenance,” and “customer development” expenses.²⁶⁴ After conducting a strategic review of its interest in Clear Media, Clear Channel disposed of its stake in the company in 2020.²⁶⁵ The SEC ordered Clear Channel to pay disgorgement and prejudgment interest, totaling over \$20.1 million and a civil penalty of \$6 million.²⁶⁶

The Clear Channel resolution demonstrates that merely identifying anti-bribery concerns through internal audits is not enough to escape liability—corporations must follow up these audit findings by implementing processes for correcting the concerns that have been raised. In addition, the settlement demonstrates that corporations should ensure that any third-party intermediaries are subjected to proper control and due diligence processes. Although the company previously reported that the DOJ also had opened an investigation into Clear Channel’s activities, there was no resolution of this matter as of January 2024.²⁶⁷

C. Monitorships

Neither the DOJ nor the SEC imposed any new monitorships relating to FCPA violations in 2023.²⁶⁸ However, in remarks at the American Conference Institute’s 40th Annual Conference on the FCPA in November, Charles Cain, the Chief of the SEC’s FCPA Unit, said that this fact represents a “success story” reflecting the “incredible” progress of

²⁶¹ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶ 18 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

²⁶² Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶¶ 14-17 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

²⁶³ U.S. Securities and Exchange Commission Press Release No. 2023-206: SEC Charges Clear Channel Outdoor with FCPA Violations Relating to China Subsidiary (Sept. 28, 2023), <https://www.sec.gov/news/press-release/2023-206>.

²⁶⁴ U.S. Securities and Exchange Commission Press Release No. 2023-206: SEC Charges Clear Channel Outdoor with FCPA Violations Relating to China Subsidiary (Sept. 28, 2023), <https://www.sec.gov/news/press-release/2023-206>.

²⁶⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Clear Channel Outdoor Holdings, Inc.*, Rel. No. 98615, File No. 3-21755, ¶ 36 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

²⁶⁶ U.S. Securities and Exchange Commission Press Release No. 2023-206: SEC Charges Clear Channel Outdoor with FCPA Violations Relating to China Subsidiary (Sept. 28, 2023), <https://www.sec.gov/news/press-release/2023-206>.

²⁶⁷ Clear Channel Outdoor Holdings, Inc., Form 10-K (filed Feb. 24, 2022), at 82-83, <https://investor.clearchannel.com/financials/sec-filings/content/0001334978-22-000010/cco-20211231.htm>.

²⁶⁸ Gaspard Le Dem, *SEC FCPA Chief: Monitorships Aren’t Dead*, GLOBAL INVESTIGATIONS REV. (Nov 29, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/sec-fcpa-chief-monitorships-arent-dead>.

corporate compliance programs.²⁶⁹ According to Cain and David Fuhr, the Chief of the DOJ's FCPA Unit, most corporate compliance programs are sufficiently advanced that monitorships are no longer necessary.²⁷⁰ However, Fuhr stressed that, despite this progress, "monitorships have been used, are being used, and will be used in appropriate circumstances."²⁷¹ Fuhr further explained that the DOJ views monitorships as a way to "help improve companies," rather than as punishments.²⁷² In order to avoid monitorships, Fuhr encouraged companies to demonstrate that they have "an effective set of policies" that actually work.²⁷³

D. Notable Features of Individual Resolutions - Continued Prioritization of Individual Enforcement Actions

As outlined in Section I.B, individual FCPA enforcement actions declined in 2023 for the fourth year in a row. This year, there were 12 individual enforcement actions, down from 13 in 2022, 17 in 2021, 31 in 2020, and 50 in 2019. The SEC did not bring any individual FCPA enforcement actions in 2022 or 2023 after bringing only one in 2021.

Despite this downward trend in individual enforcement actions, the DOJ has emphasized that it will continue to focus on individual misconduct, stressing the importance of corporations reporting any individual wrongdoing that is identified and implementing fine reduction incentives for corporations that sanction culpable employees. During her remarks in March 2023, DAG Lisa Monaco repeatedly stressed that the DOJ remains "focused" on individual accountability,²⁷⁴ warned that the DOJ is "serious about taking individual wrongdoers to trial," and highlighted the high individual conviction rate for the Criminal Division's Fraud Section in 2022.²⁷⁵ As discussed above in Section II.D, in December 2023, a bipartisan group of senators pressed DOJ officials on why, in a substantial percentage of cases, the agency did not consistently prosecute individuals in connection with charges it brought against companies.²⁷⁶ The officials pointed to key individual prosecutions and noted the logistical challenges of prosecuting foreign individuals.²⁷⁷

²⁶⁹ Gaspard Le Dem, *SEC FCPA Chief: Monitorships Aren't Dead*, GLOBAL INVESTIGATIONS REV. (Nov 29, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/sec-fcpa-chief-monitorships-arent-dead>.

²⁷⁰ Gaspard Le Dem, *SEC FCPA Chief: Monitorships Aren't Dead*, GLOBAL INVESTIGATIONS REV. (Nov 29, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/sec-fcpa-chief-monitorships-arent-dead>.

²⁷¹ Gaspard Le Dem, *SEC FCPA Chief: Monitorships Aren't Dead*, GLOBAL INVESTIGATIONS REV. (Nov 29, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/sec-fcpa-chief-monitorships-arent-dead>.

²⁷² Gaspard Le Dem, *SEC FCPA Chief: Monitorships Aren't Dead*, GLOBAL INVESTIGATIONS REV. (Nov 29, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/sec-fcpa-chief-monitorships-arent-dead>.

²⁷³ Gaspard Le Dem, *SEC FCPA Chief: Monitorships Aren't Dead*, GLOBAL INVESTIGATIONS REV. (Nov 29, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/sec-fcpa-chief-monitorships-arent-dead>.

²⁷⁴ Lisa O. Monaco, Deputy Att'y Gen., DOJ, Remarks to the ABA National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

²⁷⁵ Lisa O. Monaco, Deputy Att'y Gen., DOJ, Remarks to the ABA National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

²⁷⁶ Ben Penn, *DOJ Leaders Face Bipartisan Calls to Get Tougher on Executives*, Bloomberg Law (Dec. 12, 2023), <https://news.bloomberglaw.com/us-law-week/doj-leaders-face-bipartisan-calls-to-get-tougher-on-executives>.

²⁷⁷ Ben Penn, *DOJ Leaders Face Bipartisan Calls to Get Tougher on Executives*, Bloomberg Law (Dec. 12, 2023), <https://news.bloomberglaw.com/us-law-week/doj-leaders-face-bipartisan-calls-to-get-tougher-on-executives>.

E. Notable Features of Individual Prosecutions – Majority of Cases Involve Conduct in Latin America

In 2023, the DOJ continued to charge individuals in connection with alleged corruption schemes connected to Latin America. In fact, 10 of the 12 individuals who were charged by the DOJ during 2023 were alleged to have participated in corruption schemes involving Latin America. These cases, each described below, included alleged schemes involving Brazil, Honduras, Mexico, and Venezuela.

1. Maikel Jose Moreno Perez

In January 2023, Maikel Jose Moreno Perez, the former president of the Venezuelan Supreme Court, was indicted in the Southern District of Florida for allegedly accepting more than \$10 million in bribe payments to influence judicial decisions.²⁷⁸ From 2014 to March 2019, Moreno allegedly received bribes from certain Venezuelan contractors, and in return, he used his authority to resolve criminal cases in favor of those contractors.²⁷⁹ The indictment charges Moreno with one count of conspiracy to commit money laundering, one count of concealment of money laundering, and two counts of engaging in transactions in criminally derived property.²⁸⁰ As alleged the recipient of the bribe payments, Moreno is not liable under the FCPA, and instead, the USAO for the Southern District of Florida charged him with money laundering violations in connection with the alleged corruption. The indictment is the result of a multi-year investigation into Moreno that previously resulted in a March 2020 criminal complaint being filed in the Southern District of Florida.

2. Alvaro Ledo Nass

On February 4, 2023, Alvaro Ledo Nass, former general counsel of Petróleos de Venezuela SA (PDVSA)—Venezuela’s state-owned oil and gas company—pleaded guilty to a one-count Information charging him with conspiracy to commit money laundering.²⁸¹ According to the plea documents, Ledo admitted to engaging in various foreign currency exchange schemes using loan contracts with PDVSA that were obtained via bribes and kickbacks.²⁸² The schemes included fabricating fraudulent loans with shell companies, resulting in a profit of \$550 million.²⁸³ In June 2023, Ledo was sentenced to three years in prison, ordered to disgorge the profits from the bribery scheme, and fined \$7,500.²⁸⁴

²⁷⁸ U.S. Attorney’s Office, Southern District of Florida Press Release, Former President of Venezuelan Supreme Court Indicted on Charges of Accepting Bribes to Resolve Court Cases (Jan. 26, 2023), <https://www.justice.gov/usao-sdfl/pr/former-president-venezuelan-supreme-court-indicted-charges-accepting-bribes-resolve>.

²⁷⁹ U.S. Attorney’s Office, Southern District of Florida Press Release, Former President of Venezuelan Supreme Court Indicted on Charges of Accepting Bribes to Resolve Court Cases (Jan. 26, 2023), <https://www.justice.gov/usao-sdfl/pr/former-president-venezuelan-supreme-court-indicted-charges-accepting-bribes-resolve>.

²⁸⁰ U.S. Attorney’s Office, Southern District of Florida Press Release, Former President of Venezuelan Supreme Court Indicted on Charges of Accepting Bribes to Resolve Court Cases (Jan. 26, 2023), <https://www.justice.gov/usao-sdfl/pr/former-president-venezuelan-supreme-court-indicted-charges-accepting-bribes-resolve>.

²⁸¹ Information, *United States v. Alvaro Ledo Nass*, No. 1:23-CR-20089, at 2 (S.D. Fla. Feb. 24, 2023).

²⁸² Factual Proffer, *United States v. Alvaro Ledo Nass*, No. 1:23-CR-20089, at 2 (S.D. Fla. Mar. 29, 2023).

²⁸³ Factual Proffer, *United States v. Alvaro Ledo Nass*, No. 1:23-CR-20089, at 2 (S.D. Fla. Mar. 29, 2023).

²⁸⁴ Judgment, *United States v. Alvaro Ledo Nass*, No. 1:23-CR-20089, at 1-7 (S.D. Fla. June 15, 2023).

3. Glenn Oztemel, Gary Oztemel, and Eduardo Innecco

In February 2023, a grand jury charged Glenn Oztemel an oil and gas trader who worked at two Connecticut-based trading companies U.S., and Eduardo Innecco, a dual Brazilian and Italian citizen, who worked in Brazil as an oil and gas broker and agent for those same two trading companies, with multiple counts of violating the FCPA and anti-money laundering statutes.²⁸⁵ In a superseding indictment announced on August 29, 2023, Gary Oztemel, the owner and president of two Connecticut-based trading companies, was also charged, along with Glenn Oztemel and Eduardo Innecco, with FCPA and anti-money laundering charges.²⁸⁶ According to the superseding indictment, the Oztemels and Innecco allegedly paid bribes to Brazilian government officials to win contracts from Brazil's state-owned energy company, Petroleo Brasileiro S.A. (Petrobras).²⁸⁷ The co-conspirators allegedly disguised bribes as consulting fees and used coded language to discuss the bribes, often utilizing personal email accounts, fictitious identities, and encrypted messaging applications.²⁸⁸

4. Javier Alejandro Aguilar Morales

On August 3, 2023, a grand jury in the Southern District of Texas charged Javier Alejandro Aguilar Morales, a former oil and commodities trader at Vitol Inc., with five counts conspiracy to violate the FCPA and violations of the FCPA, the Travel Act, and money laundering statutes.²⁸⁹ According to the indictment, Aguilar and others engaged in a scheme to pay bribes to procurement managers at PEMEX Procurement International, Inc. (PPI), a wholly-owned and controlled subsidiary of Mexico's state-owned oil company Petroleos Mexicanos (PEMEX). Specifically, Aguilar allegedly agreed to make payments worth approximately \$600,000 to PPI officials in order to help Vitol win a contract to supply ethane to PEMEX through PPI.²⁹⁰ Aguilar was previously charged in the Eastern District of New York in connection with a bribery scheme involving Ecuador, and trial began in that case during January 2024.²⁹¹

5. Orlando Alfonso Contreras Saab

On September 11, 2023, Orlando Alfonso Contreras Saab was charged with one count of conspiracy to violate the FCPA for allegedly facilitating bribe payments to Jose Gregorio Vielma-Mora, the former governor of the Venezuelan

²⁸⁵ U.S. Department of Justice Press Release No. 23-187: Senior Oil and Gas Trader and Brazil-Based Intermediary Charged in Bribery and Money Laundering Scheme (Feb. 17, 2023), <https://www.justice.gov/opa/pr/senior-oil-and-gas-trader-and-brazil-based-intermediary-charged-bribery-and-money-laundering>.

²⁸⁶ U.S. Department of Justice Press Release No. 23-933, Executive Charged in International Oil and Gas Trading Bribery and Money Laundering Scheme (Aug. 29, 2023), <https://www.justice.gov/opa/pr/executive-charged-international-oil-and-gas-trading-bribery-and-money-laundering-scheme>.

²⁸⁷ U.S. Department of Justice Press Release No. 23-187: Senior Oil and Gas Trader and Brazil-Based Intermediary Charged in Bribery and Money Laundering Scheme (Feb. 17, 2023), <https://www.justice.gov/opa/pr/senior-oil-and-gas-trader-and-brazil-based-intermediary-charged-bribery-and-money-laundering>.

²⁸⁸ U.S. Department of Justice Press Release No. 23-187: Senior Oil and Gas Trader and Brazil-Based Intermediary Charged in Bribery and Money Laundering Scheme (Feb. 17, 2023), <https://www.justice.gov/opa/pr/senior-oil-and-gas-trader-and-brazil-based-intermediary-charged-bribery-and-money-laundering>.

²⁸⁹ Indictment, *United States v. Javier Alejandro Aguilar Morales*, No. 4:23-CR-00035 (S.D. Tex. Aug. 3, 2023).

²⁹⁰ Indictment, *United States v. Javier Alejandro Aguilar Morales*, No. 4:23-CR-00035, at 5 (S.D. Tex. Aug. 3, 2023).

²⁹¹ U.S. Department of Justice Press Release, *Former Manager of Oil Trading Firm Charged in Money Laundering and Bribery Scheme* (Sept. 22, 2020), <https://www.justice.gov/usao-edny/pr/former-manager-oil-trading-firm-charged-money-laundering-and-bribery-scheme>.

state of Tachira.²⁹² The indictment alleges that Vielma-Mora accepted bribes from two Colombian citizens in exchange for inflated contracts for companies under their control to provide food boxes to state agencies in Tachira.²⁹³ Contreras allegedly agreed to be an intermediary for Vielma-Mora and distributed the bribes, transferring roughly \$6.3 million to a bank account in Florida.²⁹⁴

On November 2, 2023, Contreras pled guilty to conspiracy to violate the FCPA.²⁹⁵ Sentencing is scheduled for February 16, 2024.²⁹⁶

6. Carl Alan Zaglin, Aldo Nestor Marchena, and Francisco Roberto Cosenza Centeno

In November 2023, a grand jury charged three individuals for their role in a scheme to pay and conceal bribes to Honduran government officials in exchange for contracts with the Honduran National Police.²⁹⁷ Defendants Carl Alan Zaglin and Aldo Nestor Marchena, both U.S. citizens and residents, and others allegedly agreed to pay bribes to the Honduran officials, including third defendant Francisco Roberto Cosenza Centeno, the former Executive Director of the Comité Técnico del Fideicomiso para la Administración del Fondo de Protección y Seguridad Poblacional (TASA), a Honduran governmental entity that procures goods for the National Police.²⁹⁸ Cosenza and other Honduran officials allegedly assisted several individuals, including Zaglin and Marchena, in obtaining TASA contracts, including an approximately \$4.8 million contract for National Police uniforms in 2015 and an approximately \$5.6 million contract for additional uniforms and accessories in 2016.²⁹⁹ In exchange, Zaglin, Marchena, and others allegedly used the proceeds to make over \$166,000 in bribe payments to Cosenza and another Honduran official, using bank accounts and front companies in the United States and Belize.³⁰⁰

²⁹² Information, *United States v. Orlando Alfonso Contreras Saab*, No. 1:23-CR-20364, at 3 (S.D. Fla. Sept. 11, 2023).

²⁹³ Information, *United States v. Orlando Alfonso Contreras Saab*, No. 1:23-CR-20364, at 7 (S.D. Fla. Sept. 11, 2023).

²⁹⁴ Information, *United States v. Orlando Alfonso Contreras Saab*, No. 1:23-CR-20364, at 7 (S.D. Fla. Sept. 11, 2023).

²⁹⁵ Plea Agreement, *United States v. Orlando Alfonso Contreras Saab*, No. 1:23-CR-20364 (S.D. Fla. Nov. 2, 2023).

²⁹⁶ Paperless Order Rescheduling Sentencing Hearing, *United States v. Orlando Alfonso Contreras Saab*, No. 1:23-CR-20364 (S.D. Fla. Jan. 17, 2024).

²⁹⁷ U.S. Department of Justice Press Release No. 23-1474: Three Men Charged in International Bribery and Money Laundering Scheme (Dec. 22, 2023), <https://www.justice.gov/opa/pr/three-men-charged-international-bribery-and-money-laundering-scheme>.

²⁹⁸ Indictment, *United States v. Zaglin, et al.*, No. 23-CR-20454, at 1, 2, 4 (S.D. Fla. Nov. 29, 2023).

²⁹⁹ Indictment, *United States v. Zaglin, et al.*, No. 23-CR-20454, at 9, 11 (S.D. Fla. Nov. 29, 2023).

³⁰⁰ U.S. Department of Justice Press Release No. 23-1474: Three Men Charged in International Bribery and Money Laundering Scheme (Dec. 22, 2023), <https://www.justice.gov/opa/pr/three-men-charged-international-bribery-and-money-laundering-scheme>.

F. Notable Features of Individual Prosecutions – Additional Notable Charges

1. Sam Bankman-Fried

In December 2022, a grand jury indicted Sam Bankman-Fried with wire fraud, conspiracy to commit wire fraud, conspiracy to commit commodities and securities fraud, and conspiracy to commit money laundering.³⁰¹ On March 28, 2023, the DOJ filed a superseding indictment alleging one count of FCPA violations based on an alleged bribe with cryptocurrency.³⁰² According to the indictment, Bankman-Fried allegedly directed a multi-billion-dollar bribe to Chinese officials in exchange for the unfreezing of his Alameda cryptocurrency payments worth approximately \$40 million, which led to the accounts being unfrozen.³⁰³

Although the FCPA conspiracy charge was ultimately withdrawn as a condition of extradition from the Bahamas,³⁰⁴ the DOJ's indictment against Sam Bankman-Fried marked the first-ever FCPA enforcement action based on an alleged bribe with cryptocurrency.

2. Amadou Kane Diallo

In March 2023, a grand jury indicted California businessman Amadou Kane Diallo for allegedly soliciting investments under false pretenses, charging him with 19 counts of wire fraud and two counts of money laundering.³⁰⁵ In September 2023, the DOJ filed a superseding indictment adding an FCPA anti-bribery charge.³⁰⁶ Diallo allegedly solicited investments worth \$1.8 million for purported business opportunities in Africa, but, contrary to representations made to his investors, used the money to support his lavish lifestyle. As a part of his scheme, Diallo allegedly sought to bribe Senegalese government officials in order to obtain a grant of land in Senegal.³⁰⁷ Diallo purportedly hosted a Senegalese government official in California by providing luxury accommodations and entertainment, including a chartered helicopter ride to a Los Angeles Lakers basketball game.³⁰⁸ Additionally, Diallo allegedly hosted a meeting

³⁰¹ U.S. Department of Justice Press Release No. 22-386: United States Attorney Announces Charges Against FTX Founder Samuel Bankman-Fried (Dec. 13, 2023), <https://www.justice.gov/usao-sdny/pr/united-states-attorney-announces-charges-against-ftx-founder-samuel-bankman-fried>.

³⁰² Superseding Indictment, *United States v. Samuel Bankman-Fried*, 1:22-CR-00673 (S.D.N.Y. Mar. 28, 2023).

³⁰³ Superseding Indictment, *United States v. Samuel Bankman-Fried*, 1:22-CR-00673, at 14 (S.D.N.Y. Mar. 28, 2023).

³⁰⁴ Letter to Judge Kaplan, *United States v. Samuel Bankman-Fried*, 1:22-CR-00673 (S.D.N.Y. June 14, 2023).

³⁰⁵ U.S. Department of Justice Press Release No. 23-621: Foreign National Charged for \$1.8M Wire Fraud and Money Laundering Scheme (June 1, 2023), <https://www.justice.gov/opa/pr/foreign-national-charged-18m-wire-fraud-and-money-laundering-scheme>.

³⁰⁶ First Superseding Indictment, *United States v. Amadou Kane Diallo*, No. 8:23-CR-00054, at 13-15 (C.D. Cal. Sept. 20, 2023).

³⁰⁷ First Superseding Indictment, *United States v. Amadou Kane Diallo*, No. 8:23-CR-00054, at 13 (C.D. Cal. Sept. 20, 2023).

³⁰⁸ First Superseding Indictment, *United States v. Amadou Kane Diallo*, No. 8:23-CR-00054, at 13 (C.D. Cal. Sept. 20, 2023).

with a second Senegalese official during which he offered to provide five vehicles for the official's political campaign.³⁰⁹

G. Other Notable DOJ Actions Against Individuals

1. Ricardo and Luis Martinelli

In February 2023, Judge Kiyo Matsumoto of the Eastern District of New York issued a final judgment of forfeiture against Ricardo and Luis Martinelli, sons of the former president of Panama, in connection with their guilty pleas to money laundering and bribery charges.³¹⁰ In 2021, the pair pleaded guilty to bribing government officials in Panama to secure business for Brazilian construction conglomerate Odebrecht S.A. (Odebrecht).³¹¹ Judge Matsumoto ordered the forfeiture of nearly \$38 million collectively in connection with the guilty pleas.³¹² Of note, these charges are the result of a long-running DOJ investigation into Odebrecht that the company resolved in 2016,³¹³ and the Martinelli brothers' pleas are part of a series of follow-up charges from the bribery scheme that resulted in Odebrecht disgorging \$3.5 billion in a settlement with U.S., Swiss, and Brazilian authorities.

The Martinelli brothers served as intermediaries for approximately \$28 million in bribes paid by Odebrecht to a close relative who was a high-ranking government official in Panama. The brothers admitted to creating offshore bank accounts in the names of shell companies to receive and conceal bribe proceeds from Odebrecht.³¹⁴ In 2022, both brothers were sentenced to 36 months in prison and fined \$250,000, and each brother will now forfeit approximately

³⁰⁹ First Superseding Indictment, *United States v. Amadou Kane Diallo*, No. 8:23-CR-00054, at 13 (C.D. Cal. Sept. 20, 2023).

³¹⁰ Final Order of Forfeiture, *United States v. Ricardo Alberto Martinelli Linares*, No. 1:21-CR-00065 (E.D.N.Y. Feb. 10, 2023); Final Order of Forfeiture, *United States v. Luis Enrique Martinelli Linares*, No. 1:21-CR-00065 (E.D.N.Y. Feb. 10, 2023).

³¹¹ Anna Bianca Roach, *Sons of former Panamanian president to forfeit nearly \$38m*, GLOBAL INVESTIGATIONS REV. (Feb. 12, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/sons-of-former-panamanian-president-forfeit-nearly-38m>.

³¹² Final Order of Forfeiture, *United States v. Ricardo Alberto Martinelli Linares*, No. 1:21-CR-00065 (E.D.N.Y. Feb. 10, 2023); Final Order of Forfeiture, *United States v. Luis Enrique Martinelli Linares*, No. 1:21-CR-00065 (E.D.N.Y. Feb. 10, 2023).

³¹³ U.S. Department of Justice Press Release No. 16-1515: Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History (Dec. 16, 2016), <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>.

³¹⁴ U.S. Department of Justice Press Release No. 21-1248: Panamanian Intermediary Extradited to the United States Pleads Guilty to International Bribery and Money Laundering Scheme (Dec. 14, 2021), <https://www.justice.gov/opa/pr/panamanian-intermediary-extradited-united-states-pleads-guilty-international-bribery-and>.

\$18.9 million.³¹⁵ Their convictions reaffirm the DOJ's recent focus on bringing enforcement actions against officials receiving bribes in addition to those offering the bribes.³¹⁶

2. ComEd Executives

In May 2023, a federal jury in Chicago convicted four former Commonwealth Edison (ComEd) executives and associates of conspiracy, bribery, and records falsification in violation of the FCPA's books-and-records provisions.³¹⁷ The charges relate to the executives' efforts in influencing and rewarding the former Speaker of the Illinois House of Representatives to help pass legislation favorable to the utility company.³¹⁸ As set out in the indictment, the ComEd executives sought to provide jobs, contracts, and payments to benefit the former Speaker and his associates.³¹⁹ In order to effect this scheme, the executives created false documents with ComEd and its parent company, Exelon Corporation (Exelon).³²⁰ Because Exelon's shares are traded on the Nasdaq and the company is an "issuer", as defined in the FCPA, the jury convicted the four executives of knowingly and willfully falsifying and causing to be falsified certain ComEd and Exelon books, records, and accounts in violation of the statute, even though the scheme was limited to Illinois state officials.³²¹ Sentencing has not yet been scheduled, but is expected to occur in early 2024.³²² Of note, this case involved a unique application of the FCPA to bribes of government officials in the U.S.

H. Sentencing Trends

1. Trends

In 2023, 11 individuals were sentenced in FCPA-related cases, which is fewer than in 2022 and 14 fewer than in 2021. However, FCPA defendants in 2023 received longer sentences – with Claudia Patricia Díaz Guillen and Adrian

³¹⁵ U.S. Department of Justice Press Release No. 22-547: Panama Intermediaries Each Sentenced to 36 Months in Prison for International Bribery and Money Laundering Scheme (May 20, 2022), <https://www.justice.gov/opa/pr/panama-intermediaries-each-sentenced-36-months-prison-international-bribery-and-money>.

³¹⁶ The White House, United States Strategy on Countering Corruption, at 26 (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

³¹⁷ United States Attorney's Office, Northern District of Illinois Press Release: Former Commonwealth Edison Executives and Associates Found Guilty of Conspiring to Influence and Reward Former Illinois House Speaker (May 2, 2023), <https://www.justice.gov/usao-ndil/pr/former-commonwealth-edison-executives-and-associates-found-guilty-conspiring-influence>.

³¹⁸ United States Attorney's Office, Northern District of Illinois Press Release: Former Commonwealth Edison Executives and Associates Found Guilty of Conspiring to Influence and Reward Former Illinois House Speaker (May 2, 2023), <https://www.justice.gov/usao-ndil/pr/former-commonwealth-edison-executives-and-associates-found-guilty-conspiring-influence>.

³¹⁹ Indictment, *United States v. McClain, et al.*, No. 20-CR-00812, ¶¶ 2-7, 24 (N.D. Ill. Nov. 18, 2020).

³²⁰ Indictment, *United States v. McClain, et al.*, No. 20-CR-00812, ¶ 8 (N.D. Ill. Nov. 18, 2020).

³²¹ United States Attorney's Office, Northern District of Illinois Press Release: Former Commonwealth Edison Executives and Associates Found Guilty of Conspiring to Influence and Reward Former Illinois House Speaker (May 2, 2023), <https://www.justice.gov/usao-ndil/pr/former-commonwealth-edison-executives-and-associates-found-guilty-conspiring-influence>.

³²² Matt Masterson, *Federal Prosecutors May Seek to Put 'ComEd Four' Behind Bars for Life, Defense Attorney Says*, WTTW (Nov. 15, 2023), <https://news.wttw.com/2023/11/15/federal-prosecutors-may-seek-put-comed-four-behind-bars-life-defense-attorney-says>.

José Velásquez each receiving 15 years in prison and Roger Ng (a/k/a Ng Chong Hwa) receiving 10 years in prison. Fines in 2023 ranged from \$7,500 to \$8 million and forfeiture orders ranged from \$1.5 million to \$72 million.

2. Sentences

On January 4, 2023, former Bolivian Minister of Government Arturo Carlos Murillo Prijic was sentenced to 70 months in prison after pleading guilty to one count of conspiracy to commit money laundering.³²³ Murillo received \$532,000 in bribe payments from a Florida-based company in exchange for securing a \$5.6 million contract in 2019 to provide tear gas and non-lethal equipment to the Bolivian Ministry of Defense.³²⁴ Murillo and co-conspirators laundered the bribe proceeds through the U.S. financial system, including Miami bank accounts.³²⁵ Murillo personally received \$130,000 in cash at a family member's home in Miami.³²⁶

On January 25, 2023, Jose Luis De Jongh Atencio, a former official at Citgo Petroleum Corporation, a Houston-based subsidiary of Venezuela's state-owned and state-controlled energy company Petróleos de Venezuela S.A. (PDVSA), was sentenced to 4 years in prison as a result of his pleading guilty in connection with his role in laundering millions of dollars in bribes and corruptly providing business advantages to multiple individuals who obtained contracts with Citgo and PDVSA.³²⁷

On January 30, 2023, Saman Ahsani, the former Chief Operating Officer of Monaco-based intermediary company Unaoil, was sentenced in the Southern District of Texas pursuant to a plea agreement in which he pleaded guilty to conspiracy to violate the FCPA, conspiracy to commit money laundering, and conspiracy to obstruct justice.³²⁸ As a result, he was sentenced to 12 months and one day in prison, one year of supervised release, and had to forfeit \$1,500,000.³²⁹ The plea agreement stems from Ahsani's role in corruptly facilitating bribery payments to officials in

³²³ Department of Justice Press Release No. 23-7, Former Bolivian Minister of Government Sentenced for Bribery Conspiracy (Jan. 4, 2023), <https://www.justice.gov/opa/pr/former-bolivian-minister-government-sentenced-bribery-conspiracy>.

³²⁴ Department of Justice Press Release No. 23-7, Former Bolivian Minister of Government Sentenced for Bribery Conspiracy (Jan. 4, 2023), <https://www.justice.gov/opa/pr/former-bolivian-minister-government-sentenced-bribery-conspiracy>.

³²⁵ U.S. Department of Justice Press Release No. 23-7: Former Bolivian Minister of Government Sentenced for Bribery Conspiracy (Jan. 4, 2023), <https://www.justice.gov/opa/pr/former-bolivian-minister-government-sentenced-bribery-conspiracy>.

³²⁶ U.S. Department of Justice Press Release No. 23-7: Former Bolivian Minister of Government Sentenced for Bribery Conspiracy (Jan. 4, 2023), <https://www.justice.gov/opa/pr/former-bolivian-minister-government-sentenced-bribery-conspiracy>.

³²⁷ U.S. Department of Justice Press Release 21-258: Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme (Mar. 23, 2021), <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>.

³²⁸ Order Imposing Money Judgment, *United States v. Saman Ahsani*, No. 4:19-CR-00147, at 1 (S.D. Tex. Feb 3, 2023).

³²⁹ Judgment, *United States v. Saman Ahsani*, No. 4:19-CR-00147, at 2-3 (S.D. Tex Feb 3, 2023).

Algeria, Angola, Azerbaijan, the Democratic Republic of Congo, Iran, Iraq, Kazakhstan, Libya, and Syria from 1999 to 2016.³³⁰

On March 9, 2023, former investment banker Roger Ng was sentenced to 10 years in prison following his April 2022 conviction in the Eastern District of New York on FCPA and money laundering charges.³³¹ The charges relate to Ng's role in the scheme involving Malaysia's state-owned investment and development fund. He paid more than \$1 billion in bribes to 12 government officials in Malaysia and the United Arab Emirates to obtain lucrative business for his employer. Ng was ordered to forfeit \$35.1 million as part of his sentence.³³²

On March 29, 2023, a judge in the Southern District of Florida sentenced Luis Alvarez Villamar to 26 months in prison. Alvarez pleaded guilty to taking over \$3 million from a local investment adviser in exchange for business advantages related to Ecuador's police pension fund.³³³ As the operations manager at an Ecuadorian company called Decevale, Alvarez gave the investment advisor complete control over certain investments made by the pension fund under Decevale's custody.³³⁴ In October 2023, the United States filed a civil forfeiture action seeking more than \$72 million from the investment adviser.³³⁵

Following their convictions for money laundering in Florida in late 2022, the former National Treasurer of Venezuela, Patricia Díaz Guillen, and her husband, Adrian Jose Velásquez, were each given a 15-year prison sentence on April 19, 2023.³³⁶ Díaz and Velásquez accepted \$136 million in bribes from a Venezuelan businessman who owned

³³⁰ U.S. Department of Justice Press Release No. 19-1,172: Oil Executives Plead Guilty for Roles in Bribery Scheme Involving Foreign Officials (Oct. 30, 2019), <https://www.justice.gov/opa/pr/oil-executives-plead-guilty-roles-bribery-scheme-involving-foreign-officials>.

³³¹ Judgment, *United States v. Ng Chong Hwa a.k.a Roger Ng*, No. 18-CR-538, at 3-4 (E.D.N.Y. Mar. 24, 2023).

³³² Memorandum and Order, *United States v. Ng Chong hwa a.k.a. Roger Ng*, No. 18-CR-538, at 1 (E.D.N.Y. Mar. 24, 2023).

³³³ Max Fillion, *Ecuadorian pension bribery scheme participant gets 26 months in prison*, GLOBAL INVESTIGATIONS REV. (Mar. 28, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/ecuadorian-pension-bribery-scheme-participant-gets-26-months-in-prison>.

³³⁴ Max Fillion, *Ecuadorian pension bribery scheme participant gets 26 months in prison*, GLOBAL INVESTIGATIONS REV. (Mar. 28, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/ecuadorian-pension-bribery-scheme-participant-gets-26-months-in-prison>.

³³⁵ United States Attorney's Office, Southern District of Florida Press Release: United States seeks to forfeit more than \$72 million involved in bribery and money scheme (Oct. 12, 2023), <https://www.justice.gov/usao-sdfl/pr/united-states-seeks-forfeit-more-72-million-involved-bribery-and-money-scheme>.

³³⁶ U.S. Department of Justice Press Release No. 23-437, : Former Venezuelan National Treasurer and Her Husband Sentenced in Money Laundering and International Bribery Scheme (Apr. 19, 2023), <https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-her-husband-sentenced-money-laundering-and>.

Globovision news network.³³⁷ The alleged bribes were purportedly offered in order to acquire bonds from the Venezuela National Treasury at a favorable exchange rate.³³⁸

On May 16, 2023, a federal judge sentenced the former president of a New York-based NGO to three years and six months in prison for paying bribes to elected officials of the Republic of the Marshall Islands in exchange for passing certain legislation.³³⁹ Cary Yan pleaded guilty and admitted to collaborating with others to offer substantial bribe payments aimed at securing passage of legislation to establish a semi-autonomous region within the RMI, ultimately serving his business interests.³⁴⁰ The Court had previously sentenced Yan's assistant, Gina Zhou, to 31 months in prison in connection with the scheme.³⁴¹

On June 12, 2023, Alvaro Ledo Nass, a former official at PDVSA, was sentenced to three years in prison June 2023, Alvaro Ledo Nass, a former official at PDVSA, was sentenced to three years in prison in connection with his pleading guilty to conspiracy to commit money laundering.³⁴² The sentence is the result of a plea deal in which Nass admitted to exploiting Venezuela's fixed currency exchange rate to create illegal profits that were paid as bribes to certain individuals for the purpose of obtaining loan contracts.³⁴³ Nass's sentencing is connected with several other DOJ enforcement actions against former Venezuelan officials accused of corrupt dealings with PDVSA.³⁴⁴

On September 7, 2023, a federal judge sentenced Naeem Riaz Tyab to three years in prison and three years of supervised release.³⁴⁵ Tyab pleaded guilty in 2019 to one count of conspiracy to violate the FCPA.³⁴⁶ The former founding shareholder of a Canadian energy start up, Griffiths Energy, admitted to bribing two Chadian diplomats in

³³⁷ U.S. Department of Justice Press Release No. 23-437: Former Venezuelan National Treasurer and Her Husband Sentenced in Money Laundering and International Bribery Scheme (Apr. 19, 2023), <https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-her-husband-sentenced-money-laundering-and>.

³³⁸ U.S. Department of Justice Press Release No. 23-437: Former Venezuelan National Treasurer and Her Husband Sentenced in Money Laundering and International Bribery Scheme (Apr. 19, 2023), <https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-her-husband-sentenced-money-laundering-and>.

³³⁹ U.S. Department of Justice Press Release No. 23-264: Former Head of Non-Governmental Organization Sentenced for Bribing Officials of Republic of Marshall Islands (May 16, 2023), <https://www.justice.gov/opa/pr/former-head-non-governmental-organization-sentenced-bribing-officials-republic-marshall>.

³⁴⁰ U.S. Department of Justice Press Release No. 23-264: Former Head of Non-Governmental Organization Sentenced for Bribing Officials of Republic of Marshall Islands (May 16, 2023), <https://www.justice.gov/opa/pr/former-head-non-governmental-organization-sentenced-bribing-officials-republic-marshall>.

³⁴¹ U.S. Department of Justice Press Release No. 23-264: Former Head of Non-Governmental Organization Sentenced for Bribing Officials of Republic of Marshall Islands (May 16, 2023), <https://www.justice.gov/opa/pr/former-head-non-governmental-organization-sentenced-bribing-officials-republic-marshall>.

³⁴² Judgment, *United States v. Alvaro Ledo Nass*, No. 23-CR-20089, at 2 (S.D. Fla. June 15, 2023).

³⁴³ Factual Proffer, *United States v. Alvaro Ledo Nass*, No. 23-CR-20089, at 2 (S.D. Fla. Mar. 29, 2023).

³⁴⁴ Joshua Goodman, *Top Venezuela Oil official pleads guilty to taking bribes*, ASSOCIATED PRESS, Mar. 29, 2023, <https://apnews.com/article/venezuela-corruption-alvaro-ledo-nass-pdvsa-c44a77cb635555e5223e3d73a642ae9c>.

³⁴⁵ Judgment, *United States v. Tyab*, No. 19-CR-00038, at 2-3 (D.D.C. Sept. 15, 2023).

³⁴⁶ Gaspard Le Dem, *Canadian businessman gets prison for high-level bribery scheme*, GLOBAL INVESTIGATIONS REV. (Sept. 7, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/canadian-businessman-gets-prison-high-level-bribery-scheme>.

exchange for helping Griffiths Energy secure oil rights in the country.³⁴⁷ He agreed to forfeit \$27 million in ill-gotten gains.³⁴⁸ Notably, prosecutors in the case recommended a prison term of one-and-a half to two years, where the statutory maximum for the offense is five years, citing cooperation from Tyab.³⁴⁹ Judge Leon, of the District Court for the District of Columbia, criticized the proposed sentences, believing that a longer prison sentence was necessary to deter similar conduct.³⁵⁰

I. Declinations under the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy

In 2023, the DOJ declined to prosecute three cases under its Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), two of which it said involved sufficient evidence of bribery of foreign officials to support FCPA violations and are described further below, while the third dealt with Medicare fraud and is not outlined fully here.³⁵¹ The 2023 totals were consistent with the number of declinations over recent years (two in 2022, zero in 2021, one in 2020, two in 2019, and four in 2018).³⁵² Thus far, the revisions to the CEP that went into effect in January 2023—discussed above in Section II.B—have not led to an increase in these numbers.³⁵³

1. Corsa Coal Corporation

The DOJ issued its first CEP declination of 2023 in March to Corsa Coal Corporation (Corsa), a Pennsylvania coal mining company. In its declination letter, the DOJ stated it was declining to prosecute Corsa for alleged bribes paid to Egyptian officials from late 2016 to early 2020.³⁵⁴ The alleged scheme involved Corsa paying approximately \$4.8 million to a third party based in Egypt that Corsa employees knew would use the funds to bribe Egyptian officials.³⁵⁵ One of the Egyptian officials who allegedly received the bribes was the Chairman of Al Nasr, an Egyptian state-owned

³⁴⁷ Gaspard Le Dem, *Canadian businessman gets prison for high-level bribery scheme*, GLOBAL INVESTIGATIONS REV. (Sept. 7, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/canadian-businessman-gets-prison-high-level-bribery-scheme>.

³⁴⁸ Gaspard Le Dem, *Canadian businessman gets prison for high-level bribery scheme*, GLOBAL INVESTIGATIONS REV. (Sept. 7, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/canadian-businessman-gets-prison-high-level-bribery-scheme>.

³⁴⁹ Gaspard Le Dem, *Canadian businessman gets prison for high-level bribery scheme*, GLOBAL INVESTIGATIONS REV. (Sept. 7, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/canadian-businessman-gets-prison-high-level-bribery-scheme>.

³⁵⁰ Gaspard Le Dem, *Canadian businessman gets prison for high-level bribery scheme*, GLOBAL INVESTIGATIONS REV., (Sept. 7, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/canadian-businessman-gets-prison-high-level-bribery-scheme>.

³⁵¹ U.S. Department of Justice, Declinations (updated Nov. 17, 2023), <https://www.justice.gov/criminal-fraud/corporate-enforcement-policy/declinations>.

³⁵² WilmerHale, *2022 Global Anti-Bribery Year-in-Review* (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>.

³⁵³ See Kenneth A. Polite, Jr., Assistant Att’y Gen, DOJ, Remarks on Revisions to the Criminal Division’s Corporate Enforcement Policy (Jan. 17, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>; U.S. Department of Justice, 9-47.120: Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (Jan. 2023), <https://www.justice.gov/media/1268756/dl?inline>.

³⁵⁴ Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

³⁵⁵ Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

and controlled coke company.³⁵⁶ The DOJ's investigation found that, in exchange for the bribe payments, Corsa secured approximately \$143 million in coal contracts with Al Nasr, netting Corsa about \$32.7 million in profits.³⁵⁷

The DOJ considered the following factors in its decision not to prosecute Corsa: (1) Corsa's timely and voluntary self-disclosure of the misconduct; (2) Corsa's full and proactive cooperation in the matter and commitment to continue to cooperate with any future investigations or prosecutions; (3) the nature and seriousness of the offense; (4) Corsa's timely and appropriate remediation, including its termination of a sales representative who engaged in the bribe scheme, as well as substantial improvements to its compliance program and internal controls; and (5) Corsa's agreement to disgorge the amount of its ill-gotten gains that the company could feasibly pay.³⁵⁸ Although the DOJ determined Corsa's profits from the criminal scheme totaled approximately \$32.7 million (one of the highest profit amounts ever in a DOJ declination under the CEP), it required that Corsa disgorge only \$1.2 million as part of the declination.³⁵⁹ Corsa was also able to reduce the disgorgement by proving the company's inability to pay the full amount.³⁶⁰

2. Lifecore Biomedical, Inc.

On November 16, 2023, the DOJ issued its second FCPA-related CEP declination of 2023 to Lifecore Biomedical, Inc. (Lifecore).³⁶¹ The DOJ declined to prosecute Lifecore for a bribery scheme involving Lifecore employees, agents, and its former U.S. subsidiary, Yucatan Foods L.P. (Yucatan).³⁶² According to the DOJ, from May 2018 to August 2019, certain Yucatan-affiliated individuals paid bribes to Mexican officials to secure a wastewater discharge permit as well as to obtain their signatures on fraudulent manifests to make the manifests appear legitimate.³⁶³ These bribes occurred both before and after Lifecore acquired Yucatan at the end of 2018.³⁶⁴ Importantly, as the DOJ's declination letter notes, a Yucatan employee (who was later terminated) had concealed the misconduct from Lifecore during its

³⁵⁶ Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

³⁵⁷ Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

³⁵⁸ Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

³⁵⁹ Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

³⁶⁰ The DOJ also engaged a forensic accounting expert, who determined that disgorgement of more than \$1.2 million "would substantially threaten the continued viability of the Company." Letter from Glenn S. Leon, DOJ, and Troy Rivetti, Western District of Pennsylvania, Re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

³⁶¹ The third CEP declination of 2023 was issued to HealthSun Health Plans, Inc. on October 25, 2023, concerning a scheme to submit fraudulent information about patients' diagnoses to receive inflated Medicare payouts. See Letter from Glenn S. Leon, DOJ and John (Fritz) Scanlon, DOJ, Re: HealthSun Health Plans, Inc. (Oct. 25, 2023), <https://www.justice.gov/d9/2023-10/doj-with-bt-signature-executed.pdf>.

³⁶² Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

³⁶³ Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

³⁶⁴ Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

pre-acquisition due diligence.³⁶⁵ The letter also notes that Lifecore initiated an internal investigation once it was aware of the issue and self-disclosed to the DOJ “hours after” the company’s internal investigation confirmed the misconduct.³⁶⁶

Although the DOJ concluded the evidence was sufficient to bring FCPA charges against Lifecore, it declined prosecution based on an assessment of the factors similar to those it cited in the Corsa declination letter, including: (1) Lifecore’s timely and voluntary self-disclosure of the misconduct, which included reporting the misconduct to the DOJ within three months of first discovering the possibility of misconduct and hours after an internal investigation confirmed the misconduct; (2) Lifecore’s full and proactive cooperation in the matter (including its provision of all known relevant facts about the misconduct), and its agreement to continue to cooperate with any ongoing government investigations and prosecutions that might result in the future, including following Lifecore’s divestiture of Tanok and the legacy Yucatan business; (3) the nature and seriousness of the offense; (4) Lifecore’s timely and appropriate remediation, including the termination of the Yucatan officer engaged in the bribery scheme and substantially improving its compliance program and internal controls; and (5) the fact that Lifecore agreed to disgorge the costs it avoided having to pay as a result of the bribery scheme to the sum of \$406,505.³⁶⁷ This figure reflects the total costs that Lifecore avoided, less approximately \$880,000 Lifecore spent in constructing a wastewater treatment plant and duties paid to the Mexican regulators.³⁶⁸ Additionally, Lifecore agreed to make continued cooperation with the DOJ a material condition for any future transfer of control of Yucatan.³⁶⁹

J. Recovery of Corruption-Related Assets

On March 27, 2023, the DOJ announced that it had recovered over \$53 million in cash and a promissory note with a principal value of \$16 million in connection with two civil cases brought under the DOJ’s Kleptocracy Asset Recovery Initiative.³⁷⁰ The initiative, led by prosecutors in the DOJ Criminal Division’s Money Laundering and Asset Recovery Section (MLARS), aims to forfeit the proceeds of foreign official corruption for the benefit of the those harmed by such corruption.³⁷¹

³⁶⁵ Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

³⁶⁶ Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

³⁶⁷ Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

³⁶⁸ Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

³⁶⁹ Letter from Glenn S. Leon, DOJ, and Ismail J. Ramsey, Norther District of California, Re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

³⁷⁰ U.S. Department of Justice Press Release No. 23-334: Justice Department Recovers Over \$53M in Profits Obtained from Corruption in the Nigerian Oil Industry (Mar. 27, 2023), <https://www.justice.gov/opa/pr/justice-department-recovers-over-53m-profits-obtained-corruption-nigerian-oil-industry>.

³⁷¹ U.S. Department of Justice Press Release No. 23-334: Justice Department Recovers Over \$53M in Profits Obtained from Corruption in the Nigerian Oil Industry (Mar. 27, 2023), <https://www.justice.gov/opa/pr/justice-department-recovers-over-53m-profits-obtained-corruption-nigerian-oil-industry/>

The two civil cases—against Nigerian businessmen Kolawole Akanni Aluko and Olajide Omokore—alleged that Aluko and Omokore conspired to pay bribes to a Nigerian official overseeing the state-owned oil company.³⁷² The Nigerian official, in return, provided lucrative contracts to companies owned by Aluko and Omokore.³⁷³ Aluko and Omokore then laundered the proceeds of the illicitly awarded contracts in and through the United States—a total of over \$100 million.³⁷⁴ The proceeds from the foreign corrupt contracts were used to purchase various luxury assets through shell companies, including real estate and a superyacht, and as collateral for loans.³⁷⁵ As part of the forfeiture process, the luxury assets were liquidated and the lien holders were fully compensated.³⁷⁶

In a December 2023 speech at the Global Forum on Asset Recovery in Atlanta, Deputy Assistant Attorney General Kevin Driscoll announced that the DOJ was returning to Malaysia over \$100 million in additional funds recovered in connection with Malaysia's sovereign wealth fund 1MDB's corruption scandal.³⁷⁷ The additional funds bring the total amount the United States has returned or helped return to Malaysia in connection with the embezzlement and bribery scheme to over \$1.3 billion.³⁷⁸ The DOJ, which began its efforts on the matter in 2016, continues its work to secure additional recoveries.³⁷⁹

³⁷² U.S. Department of Justice Press Release No. 23-334: Justice Department Recovers Over \$53M in Profits Obtained from Corruption in the Nigerian Oil Industry (Mar. 27, 2023), <https://www.justice.gov/opa/pr/justice-department-recovers-over-53m-profits-obtained-corruption-nigerian-oil-industry>.

³⁷³ U.S. Department of Justice Press Release No. 23-334: Justice Department Recovers Over \$53M in Profits Obtained from Corruption in the Nigerian Oil Industry (Mar. 27, 2023), <https://www.justice.gov/opa/pr/justice-department-recovers-over-53m-profits-obtained-corruption-nigerian-oil-industry>.

³⁷⁴ U.S. Department of Justice Press Release No. 23-334: Justice Department Recovers Over \$53M in Profits Obtained from Corruption in the Nigerian Oil Industry (Mar. 27, 2023), <https://www.justice.gov/opa/pr/justice-department-recovers-over-53m-profits-obtained-corruption-nigerian-oil-industry>.

³⁷⁵ U.S. Department of Justice Press Release No. 23-334: Justice Department Recovers Over \$53M in Profits Obtained from Corruption in the Nigerian Oil Industry (Mar. 27, 2023), <https://www.justice.gov/opa/pr/justice-department-recovers-over-53m-profits-obtained-corruption-nigerian-oil-industry>.

³⁷⁶ U.S. Department of Justice Press Release No. 23-334: Justice Department Recovers Over \$53M in Profits Obtained from Corruption in the Nigerian Oil Industry (Mar. 27, 2023), <https://www.justice.gov/opa/pr/justice-department-recovers-over-53m-profits-obtained-corruption-nigerian-oil-industry>.

³⁷⁷ Kevin Driscoll, Deputy Assistant Att'y Gen., DOJ, Remarks at the Global Forum on Asset Recovery Action Series in Atlanta (Dec. 12, 2023), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-kevin-driscoll-delivers-remarks-global-forum-asset>.

³⁷⁸ Kevin Driscoll, Deputy Assistant Att'y Gen., DOJ, Remarks at the Global Forum on Asset Recovery Action Series in Atlanta (Dec. 12, 2023), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-kevin-driscoll-delivers-remarks-global-forum-asset>.

³⁷⁹ Kevin Driscoll, Deputy Assistant Att'y Gen., DOJ, Remarks at the Global Forum on Asset Recovery Action Series in Atlanta (Dec. 12, 2023), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-kevin-driscoll-delivers-remarks-global-forum-asset>.

DAAG Driscoll further announced that the DOJ is returning over \$1 million to Honduras that was recovered in the criminal prosecution of the brother of the former director of the Honduran social security agency.³⁸⁰ The brothers had engaged in a kickback and embezzlement scheme involving social security agency funds.³⁸¹

Finally, DAAG Driscoll announced that, earlier in 2023, the DOJ returned approximately \$1 million in corrupt proceeds to the Federal Republic of Nigeria.³⁸² The United States returned the laundered funds under an agreement that Nigeria would use the funds to rehabilitate certain healthcare centers throughout Bayelsa State.³⁸³

K. Whistleblower Awards

In fiscal year 2023, the SEC's Whistleblower Program issued awards totaling nearly \$600 million, a new record.³⁸⁴ The SEC "received more than 18,000 whistleblower tips in fiscal year 2023, a record number and approximately 50 percent more than the then-record 12,300 whistleblower tips received in fiscal year 2022."³⁸⁵

On May 5, 2023, the SEC issued an award of nearly \$279 million to a whistleblower. The SEC didn't name the enforcement action underlying the award and didn't identify the tipster, in keeping with whistleblower protection rules that prevent the regulator from divulging this information to the public. However, multiple new agencies reported that the tip led to a \$1.1 billion settlement with Swedish telecom company Telefonaktiebolaget LM Ericsson (Ericsson) over alleged FCPA violation. This award was the largest ever issued in the history of the SEC's whistleblower program, more than double the previous record of \$114 million from 2020 and dwarfing the \$37 million figure of the largest award paid in 2022.³⁸⁶

In its order announcing the \$279 million whistleblower award, the SEC said that the award was appropriate because the claimant provided "original information" to the Commission that "led to the successful enforcement" and which

³⁸⁰ Kevin Driscoll, Deputy Assistant Att'y Gen., DOJ, Remarks at the Global Forum on Asset Recovery Action Series in Atlanta (Dec. 12, 2023), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-kevin-driscoll-delivers-remarks-global-forum-asset>.

³⁸¹ Kevin Driscoll, Deputy Assistant Att'y Gen., DOJ, Remarks at the Global Forum on Asset Recovery Action Series in Atlanta (Dec. 12, 2023), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-kevin-driscoll-delivers-remarks-global-forum-asset>.

³⁸² Kevin Driscoll, Deputy Assistant Att'y Gen., DOJ, Remarks at the Global Forum on Asset Recovery Action Series in Atlanta (Dec. 12, 2023), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-kevin-driscoll-delivers-remarks-global-forum-asset>.

³⁸³ Kevin Driscoll, Deputy Assistant Att'y Gen., DOJ, Remarks at the Global Forum on Asset Recovery Action Series in Atlanta (Dec. 12, 2023), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-kevin-driscoll-delivers-remarks-global-forum-asset>.

³⁸⁴ U.S. Securities and Exchange Commission Press Release No. 2023-234: SEC Announces Enforcement Results for Fiscal Year 2023 (Nov. 14, 2023), <https://www.sec.gov/news/press-release/2023-234>. The SEC's fiscal year-end is September 30.

³⁸⁵ U.S. Securities and Exchange Commission Press Release No. 2023-234: SEC Announces Enforcement Results for Fiscal Year 2023 (Nov. 14, 2023), <https://www.sec.gov/news/press-release/2023-234>.

³⁸⁶ U.S. Securities and Exchange Commission Press Release No. 2023-89: SEC Issues Largest-Ever Whistleblower Award (May 5, 2023); *and see* Mengqi Sun, *Record \$279 Million Whistleblower Award Went to a Tipster on Ericsson*, WALL ST. J. (May 26, 2023), <https://www.wsj.com/articles/record-279-million-whistleblower-award-went-to-a-tipster-on-ericsson-5af40b98>; Mengqi Sun, *Whistleblower in Healthcare Bribery Case Won the Largest SEC Award this Year*, WALL ST. J. (Dec. 19, 2022), <https://www.wsj.com/articles/whistleblower-in-healthcare-bribery-case-won-the-largest-sec-award-this-year-11671498462>.

was “significant” because it “caused Enforcement staff [. . .] to expand the investigation” and “saved the Commission significant time and resources.”³⁸⁷ According to multiple new agencies, the SEC denied awards to two other whistleblower claimants—one of which was identified as former Ericsson executive Liss-Olaf Nenzell³⁸⁸—because, according to the redacted SEC order, the information they provided did not “significantly contribute to the success of a Commission judicial or administrative enforcement action.”³⁸⁹

Despite the record-high amount of whistleblower awards paid out in 2023 and the fact that the SEC is receiving more whistleblower tips than ever, public reporting indicates that fewer claimants are successful in obtaining an award.³⁹⁰ Nonetheless, there has been an uptick in whistleblower allegations, resulting in costly investigations into claims asserted by tipsters represented by experienced whistleblower lawyers, even where those claims turn out to be unsubstantiated.

IV. KEY LEGAL DEVELOPMENTS

In 2022, federal courts considered several significant matters related to the FCPA, including the extraterritorial reach of the FCPA and the admissibility in a criminal proceeding of interviews conducted during an internal investigation. The DOJ also issued two Opinion Procedure Releases which provide valuable insights on discrete characteristics of the FCPA.

A. Cases

1. *United States v. Paulo Jorge Da Costa Casqueiro Murta and United States v. Daisy Teresa Rafoi Bleuler*

In 2023, Judge Kenneth Hoyt of the Southern District of Texas granted another dismissal in related cases *United States v. Paulo Jorge Da Costa Casqueiro Murta* and *United States v. Daisy Teresa Rafoi Bleuler*, following remand from the Fifth Circuit. These cases began in April 2019, when Swiss-Portuguese banker Paulo Jorge Da Costa Casqueiro Murta (Murta), Swiss national Daisy Teresa Rafoi Bleuler (Rafoi), and others were indicted on charges of money laundering, conspiracy to commit money laundering, and conspiracy to violate the FCPA.³⁹¹ Specifically, Murta and Rafoi were accused of participating in a bribery scheme involving PDVSA.³⁹²

³⁸⁷ Order Determining Whistleblower Award Claims, *In the Matter of Claims for Award in connection with [Redacted]*, Rel No. 97438, File No. 2023-55, at 5 (May 5, 2023), <https://www.sec.gov/files/rules/other/2023/34-97438.pdf>.

³⁸⁸ Mengqi Sun, *Other Tipsters Appeal After SEC Awarded One Whistleblower \$279 Million in Ericsson Case*, WALL ST. J. (June 2, 2023), <https://www.wsj.com/articles/other-tipsters-appeal-after-sec-awarded-one-whistleblower-279-million-in-ericsson-case-c00a9984>.

³⁸⁹ Order Determining Whistleblower Award Claims, *In the Matter of Claims for Award in connection with [Redacted]*, Rel No. 97438, File No. 2023-55, at 6, 10 (May 5, 2023), <https://www.sec.gov/files/rules/other/2023/34-97438.pdf>.

³⁹⁰ John Holland, *SEC Payouts to Whistleblowers Plummet Despite Record Surge in Tips*, LA TIMES (Dec. 26, 2023), <https://www.latimes.com/business/story/2023-12-26/sec-payouts-to-whistleblowers-plummet-despite-record-surge-in-tips>.

³⁹¹ Superseding Indictment, *United States v. Nervis G. Villalobos-Cardenas, Alejandro Isturiz-Chiesa, Rafael E. Reiter-Munoz, Javier Alvarado-Ochoa, Daisy T. Rafoi-Bleuler, and Paulo J.D.C. Casqueiro-Murta*, No. 17-CR-00514, (S.D. Tex. Apr. 24, 2019).

³⁹² Superseding Indictment, *United States v. Nervis G. Villalobos-Cardenas, Alejandro Isturiz-Chiesa, Rafael E. Reiter-Munoz, Javier Alvarado-Ochoa, Daisy T. Rafoi-Bleuler, and Paulo J.D.C. Casqueiro-Murta*, No. 17-CR-00514, (S.D. Tex. Apr. 24, 2019).

Judge Hoyt first dismissed all charges against Rafoi on November 10, 2021, for lack of jurisdiction,³⁹³ and subsequently did the same for the charges against Murta on July 11, 2022, for failure to state a claim, lack of subject matter jurisdiction, denial of due process rights, and vagueness, and also because the statute of limitations had expired.³⁹⁴

In its February 8, 2023 decision, the Fifth Circuit rejected all aspects of Judge Hoyt's November 2021 and July 2022 rulings, reversing and remanding the cases.³⁹⁵ First, the court countered the district court's conclusion that it lacked subject matter jurisdiction over the FCPA and money laundering charges because it did not apply extraterritorially to Murta and Rafoi.³⁹⁶ The court explained that, to establish subject matter jurisdiction, a federal indictment only needs to charge a defendant with an offense against the United States in language similar to that used by the relevant statute,³⁹⁷ stating further that extraterritoriality is a merits question, not one of subject matter jurisdiction.³⁹⁸ The court concluded that, as a result, the district court's "dismissal on jurisdictional grounds was in error."³⁹⁹

Additionally, the Fifth Circuit found that the indictment had sufficiently alleged that Murta violated 15 U.S.C. § 78dd-3 because it asserted that Murta acted in furtherance of the FCPA conspiracy during a trip to Miami.⁴⁰⁰ The court also held that the term "agent" in the context of § 78dd-2(a) of the FCPA was not unconstitutionally vague and that the DOJ had sufficiently alleged facts to establish a cause of action as to both Murta and Rafoi.⁴⁰¹ As to the money laundering-related charges, the court found that the DOJ had sufficiently alleged that Murta's and Rafoi's actions satisfied the extraterritoriality provision of 18 U.S.C. § 1956.⁴⁰² Finally, the court rejected Judge Hoyt's finding that the statute of limitations had expired.⁴⁰³

Murta's bid to dismiss the charges against him did not end there. He filed a motion to dismiss based on a violation of the Speedy Trial Act on February 21, 2022,⁴⁰⁴ which Judge Hoyt found unnecessary to resolve in his July 2022 ruling due to his determination "that the statute of limitations required dismissal of the charges against" Murta.⁴⁰⁵ After the

³⁹³ *United States v. Rafoi-Bleuler*, 2021 WL 9884704, at *1 (S.D. Tex. Nov. 10, 2021).

³⁹⁴ *United States v. Leon-Perez*, 2022 WL 4002321, at *3-4, *7 (S.D. Tex. July 11, 2022). Judge Hoyt also granted Murta's motion to suppress statements made to Portuguese or U.S. Department of Homeland Security (DHS) agents in connection with a March 20, 2018 interview of Murta that DHS agents conducted in Portugal. *Id.* at *11.

³⁹⁵ *United States v. Rafoi*, 60 F.4th 982, 991 (5th Cir. 2023). The Fifth Circuit also reversed and remanded Judge Hoyt's decision to grant Murta's motion to suppress. *Id.* at 991.

³⁹⁶ *United States v. Rafoi*, 60 F.4th 982, 992 (5th Cir. 2023).

³⁹⁷ *United States v. Rafoi*, 60 F.4th 982, 992 (5th Cir. 2023) (citing *United States v. Scruggs*, 714 F.3d 258, 262 (5th Cir. 2013)).

³⁹⁸ *United States v. Rafoi*, 60 F.4th 982, 992-93 (5th Cir. 2023).

³⁹⁹ *United States v. Rafoi*, 60 F.4th 982, 992 (5th Cir. 2023).

⁴⁰⁰ *United States v. Rafoi*, 60 F.4th 982, 994-95 (5th Cir. 2023).

⁴⁰¹ *United States v. Rafoi*, 60 F.4th 982, 997 (5th Cir. 2023).

⁴⁰² *United States v. Rafoi*, 60 F.4th 982, 999 (5th Cir. 2023).

⁴⁰³ *United States v. Rafoi*, 60 F.4th 982, 1002 (5th Cir. 2023).

⁴⁰⁴ Def.'s Motion to Dismiss Superseding Indictment based on Violation of Speedy Trial Act, *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 4:17-CR-00514 (Feb. 21, 2022), ECF No. 263.

⁴⁰⁵ *United States v. Leon-Perez*, 2022 WL 4002321, at *8, n.15 (S.D. Tex. July 11, 2022).

Fifth Circuit overturned that ruling in its February 2023 decision, Murta subsequently filed a motion to dismiss based on a constitutional speedy trial violation⁴⁰⁶ and a supplemental motion to dismiss based on a violation of the Speedy Trial Act on April 3, 2023.⁴⁰⁷ Judge Hoyt granted Murta's motions to dismiss with prejudice "in light of the government's intentional and protracted delays."⁴⁰⁸ The DOJ appealed, and on November 28, 2023, the Fifth Circuit affirmed the dismissal pursuant to the Speedy Trial Act but reversed the district court's decision to do so with prejudice, directing the Chief Judge of the Southern District of Texas to reassign the case to another district judge.⁴⁰⁹ The Fifth Circuit's opinion was subsequently withdrawn and substituted with a substantially similar opinion that now explicitly notes that the record only indicated that the government "at most ... was negligent" in raising a discovery issue in the lead-up to the case's March 2022 continuance, and did not indicate any intentional bad faith actions by the government as found by the district court.⁴¹⁰

After the Chief Judge reassigned the case as to all defendants, Rafoi moved to vacate the reassignment order as it applied to her.⁴¹¹ Judge Hoyt subsequently recused himself rather than rule on her motion, finding that "the ends of justice are served by recusal of the judicial officer" in the case.⁴¹²

2. *United States v. Coburn*

On July 20, 2023, the District of New Jersey denied motions from two former Cognizant executives, Gordon Coburn and Steven Schwartz, to suppress evidence from interviews they gave to the company's counsel and to compel the DOJ to search Cognizant's systems for exculpatory material.⁴¹³ The motions stemmed from a 2016 internal investigation conducted by Cognizant, which led to the former executives' indictment in 2019 for their alleged participation in a bribery scheme.

In August 2016, Cognizant uncovered allegations through an internal investigation that then-General Counsel Schwartz and then-President Coburn had authorized a large bribe payment to Indian officials.⁴¹⁴ When Cognizant required both to cooperate fully with the investigation under threat of termination,⁴¹⁵ Coburn sat for one interview and

⁴⁰⁶ Def.'s Motion to Dismiss Superseding Indictment based on Violation of Speedy Trial Act, *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 4:17-CR-00514 (Apr. 3, 2023), ECF No. 411.

⁴⁰⁷ Def.'s Supp. Motion to Dismiss Superseding Indictment based on Violation of Speedy Trial Act, *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 4:17-CR-00514 (Apr. 3, 2023), ECF No. 412.

⁴⁰⁸ *United States v. Murta*, 2023 WL 3855313, at *9 (S.D. Tex. June 6, 2023).

⁴⁰⁹ *United States v. Murta*, 2023 WL 8227535, at *8 (5th Cir. 2023).

⁴¹⁰ *United States v. Murta*, 2024 WL 64764, at *8, n.9 (5th Cir. 2024).

⁴¹¹ Def.'s Opp. Motion to Vacate Reassignment Order as to Daisy Rafoi, *United States v. Daisy T. Rafoi-Bleuler*, No. 4:17-CR-00514, at 1 (S.D. Tex. Dec. 1, 2023), ECF No. 565. For more information, see WilmerHale, *2021 Global Anti-Bribery Year-in-Review* (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>.

⁴¹² Order, *United States v. Nervis Gerardo Villalobos-Cardenas, et al.*, No. 4:17-CR-00514, at 1 (S.D. Tex. Dec. 7, 2023), ECF No. 570.

⁴¹³ *United States v. Coburn*, 2023 WL 6210864 (D.N.J. July 20, 2023).

⁴¹⁴ *United States v. Coburn*, 2023 WL 6210864, at *2 (D.N.J. July 20, 2023).

⁴¹⁵ *United States v. Coburn*, 2023 WL 6210864, at *2 (D.N.J. July 20, 2023).

Schwartz sat for two before both ultimately resigned.⁴¹⁶ After the two executives sat for their first interviews, Cognizant voluntarily disclosed the potential FCPA violation to the DOJ and asked to be considered for inclusion in the FCPA Pilot Program that the DOJ announced in 2016 to reward self-disclosed FCPA-related misconduct with a range of potential benefits, including and up to a declination of prosecution.⁴¹⁷ Cognizant ultimately produced over 100,000 pages of documents to the DOJ, summarized interviews for prosecutors, and helped prosecutors authenticate documents.⁴¹⁸ On February 13, 2019, the DOJ announced that it had declined to prosecute Cognizant, and Schwartz and Coburn were indicted for the alleged bribery scheme the following day.⁴¹⁹ On February 15, 2019, the SEC settled FCPA charges with Cognizant and charged the two executives for their roles in facilitating the payment of millions of dollars in a bribe to an Indian government official.⁴²⁰

The court first considered the motion to suppress evidence taken from interviews that the defendants had given to Cognizant counsel,⁴²¹ ruling that statements made to private employers under threat of termination are inadmissible in subsequent criminal proceedings where the employer's actions are fairly attributable to the government,⁴²²—defined as when there is a “sufficiently close nexus between the State and the challenged action”⁴²³—which can exist where the government provides the private actor with “*significant* encouragement, either overt or covert” for the “specific conduct” at issue.⁴²⁴ The court held, however, that the interviews Cognizant conducted with Coburn and Schwartz were *not* fairly attributable to the government, citing the fact that DOJ was not aware of the misconduct until after Coburn's sole interview and Schwartz's first interview,⁴²⁵ nor did the DOJ direct Cognizant to interview certain witnesses or to ask certain questions.⁴²⁶ The court explained that it was not sufficient that Cognizant acted with the hopes of receiving a declination.⁴²⁷

The court then considered the motion to compel a search of Cognizant's systems for exculpatory information.⁴²⁸ The court highlighted that, as a general matter, the government has a duty to disclose favorable evidence to a criminal defendant where the government may be deemed to have constructive possession of the evidence.⁴²⁹ A prosecutor

⁴¹⁶ *United States v. Coburn*, 2023 WL 6210864, at *2-4 (D.N.J. July 20, 2023).

⁴¹⁷ *United States v. Coburn*, 2023 WL 6210864, at *1 (D.N.J. July 20, 2023).

⁴¹⁸ *United States v. Coburn*, 2023 WL 6210864, at *4 (D.N.J. July 20, 2023).

⁴¹⁹ *United States v. Coburn*, 2023 WL 6210864, at *5 (D.N.J. July 20, 2023).

⁴²⁰ U.S. Securities and Exchange Commission Press Release No. 2019-12: SEC Charges Cognizant and Two Former Executives With FCPA Violations (Feb. 15, 2019), <https://www.sec.gov/news/press-release/2019-12>.

⁴²¹ *See United States v. Coburn*, 2023 WL 6210864, at *6-10 (D.N.J. July 20, 2023).

⁴²² *United States v. Coburn*, 2023 WL 6210864, at *6 (D.N.J. July 20, 2023) (citing *United States v. Connolly*, No. 16 CR. 0370 (CM), 2019 WL 2120523, at *10 (S.D.N.Y. May 2, 2019).

⁴²³ *United States v. Coburn*, 2023 WL 6210864, at *6 (D.N.J. July 20, 2023), (internal quotations omitted).

⁴²⁴ *United States v. Coburn*, 2023 WL 6210864, at *6 (D.N.J. July 20, 2023), (internal quotations omitted) (emphasis in original).

⁴²⁵ *United States v. Coburn*, 2023 WL 6210864, at *7 (D.N.J. July 20, 2023).

⁴²⁶ *United States v. Coburn*, 2023 WL 6210864, at *8 (D.N.J. July 20, 2023).

⁴²⁷ *United States v. Coburn*, 2023 WL 6210864, at *9 (D.N.J. July 20, 2023).

⁴²⁸ *See United States v. Coburn*, 2023 WL 6210864, at *10-12 (D.N.J. July 20, 2023).

⁴²⁹ *United States v. Coburn*, 2023 WL 6210864, at *10 (D.N.J. July 20, 2023).

may be deemed to have constructive possession of evidence even where he or she has no actual knowledge of the evidence “but should nevertheless have known that the material at issue was in existence.”⁴³⁰ The court held that the government did not have constructive possession in this instance⁴³¹ and was therefore not obligated to search Cognizant’s corporate files for exculpatory materials.⁴³²

3. United States v. Ahsani

On August 4, 2023, the Fifth Circuit Court of Appeals denied a motion filed by a group of press organizations requesting the release of sealed information related to the sentencing of former Unaoil executives Cyrus and Saman Ahsani and challenging the district court’s decision to close to the press and the public part of Saman Ahsani’s sentencing hearing.⁴³³ This ruling upheld a February 23, 2023 decision from the Southern District of Texas, which found that unsealing the sentencing memoranda detailing Ahsani’s ongoing cooperation with the U.S. government could endanger him and his family and undermine the ongoing investigation.⁴³⁴ The press organizations argued that the public’s right to access outweighed the need to keep sentencing memoranda secret, as many details had already been reported.⁴³⁵ The press organizations also argued that the district court failed to follow proper protocol by closing part of Ahsani’s sentencing hearing to the press and public without notice.⁴³⁶ The Fifth Circuit agreed that the district court had violated the First Amendment by failing to provide any notice that it would close part of the sentencing hearing to the press and the public.⁴³⁷ However, the appeals court also agreed that the district court’s sealing decisions were justified and that the procedural error committed by the district court in failing to provide the press organizations with a meaningful opportunity to be heard before denying their motion to unseal did not warrant reversal.⁴³⁸

B. DOJ Opinion Procedure Releases

For the first time since 2014, the DOJ issued two Opinion Procedure Releases in the same year. These Opinion Procedure Releases highlighted the importance of intent and purpose behind expenditures, and they outline helpful guidance for companies seeking to evaluate compliance of certain of their activities with the FCPA.

⁴³⁰ *United States v. Coburn*, 2023 WL 6210864, at *10 (D.N.J. July 20, 2023), (internal quotations omitted).

⁴³¹ *United States v. Coburn*, 2023 WL 6210864, at *10 (D.N.J. July 20, 2023), (internal quotations omitted) (Because the court could not identify binding caselaw where the government was found to have constructive possession of evidence held by a private party, it based its analysis on the three factors identified by the Third Circuit in *United States v. Risha*, 445 F.3d, 298 (3d Cir. 2006), which discussed constructive possession of evidence held by state authorities in connection with a federal prosecution. Those three factors were: “(1) whether the party with knowledge of the information is acting on the government’s behalf or is under its control; (2) the extent to which state and federal governments are part of a team, are participating in a joint investigation or are sharing resources; and (3) whether the entity charged with constructive possession has ready access to the evidence.”).

⁴³² *United States v. Coburn*, 2023 WL 6210864, at *12 (D.N.J. July 20, 2023).

⁴³³ *United States v. Ahsani*, 76 F.4th 441, 444 (5th Cir. 2023).

⁴³⁴ *United States v. Ahsani*, 76 F.4th 441, 446 (5th Cir. 2023).

⁴³⁵ *United States v. Ahsani*, 76 F.4th 441, 447 (5th Cir. 2023).

⁴³⁶ *United States v. Ahsani*, 76 F.4th 441, 444 (5th Cir. 2023).

⁴³⁷ *United States v. Ahsani*, 76 F.4th 441, 448-49 (5th Cir. 2023).

⁴³⁸ *United States v. Ahsani*, 76 F.4th 441, 454-55 (5th Cir. 2023).

1. Opinion Procedure Release 23-01

An accredited U.S.-based child welfare agency that provides adoption services in a foreign country requested an opinion from the DOJ about whether its prospective compliance with a new requirement of the foreign country's central authority for adoption would run afoul of the FCPA.⁴³⁹ In particular, this requirement provides that officials from the foreign country's central authority for adoption visit children adopted from that country on an annual basis to confirm the success of the adoptions. The adoption services provider proposed to pay certain expenses on behalf of foreign officials charged with carrying out this new requirement. The proposed expenses included various travel-related costs for the officials, such as economy class airfare, mid-range hotel lodging, local transportation, meals, and recreation (such as a visit to a museum, not to exceed \$100 per person).⁴⁴⁰ The proposed expenses would be paid directly to providers and not as reimbursements or stipends to the officials,⁴⁴¹ and any souvenirs provided to the officials would be company-branded and of nominal value.⁴⁴²

On August 14, 2023, the DOJ issued Opinion Procedure Release 23-01, which highlighted that the adoption services provider had no non-routine business under consideration by any of the foreign country's agencies and that all routine (i.e., adoption-related) business pending in front of the foreign country's agencies "is guided by an international treaty and administrative rules with identified standards."⁴⁴³ The DOJ further noted that the foreign government, and not the adoption services provider, would select the officials for travel.⁴⁴⁴ In addition, the DOJ noted that the adoption services provider had also "invited other adoption agencies accredited to provide adoption services to the foreign country to join it in hosting the foreign officials," but no other provider had accepted the invitation.⁴⁴⁵

The DOJ concluded that it does not intend to take any enforcement action under the FCPA's anti-bribery provisions based on the facts and circumstances represented to the DOJ by the adoption services provider. The DOJ explained that this decision was based on (1) the lack of corrupt intent behind the proposed expenses; and (2) the fact that the expenses "appear[ed] to be reasonable and bona fide" and "directly related to 'the promotion, demonstration, or explanation of [the adoption service provider's] products or services.'"⁴⁴⁶

⁴³⁹ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

⁴⁴⁰ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

⁴⁴¹ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

⁴⁴² U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

⁴⁴³ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

⁴⁴⁴ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

⁴⁴⁵ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

⁴⁴⁶ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

2. Opinion Procedure Release 23-02

In an Opinion Procedure Release published on October 25, 2023, the DOJ responded to a request for an opinion from a government contractor that conducts training events for multiple U.S. government agencies, including events involving foreign government agencies.⁴⁴⁷ The contract requires, among other things, that the contractor provide logistical support to foreign government personnel that includes providing meal stipends and mileage reimbursements.⁴⁴⁸ The contractor proposed to pay these stipends to a U.S. government officer, who would in turn deliver them to the foreign officials.⁴⁴⁹

The DOJ focused on several representations made by the contractor, including that: (1) the contracting agency advised the contractor that the stipends were authorized under the Foreign Assistance Act of 1961; (2) the U.S. government approves or sets the stipend payment amounts; (3) the stipend payments are modest—between \$8 and \$40 per day, depending on the location of the training event; (4) the contractor maintains accounting records associated with cash transactions and provides the documentation to the contracting agency; (5) the contractor received the contract underlying these stipend payments via a competitive bidding process operated by the U.S. government and was unaware of the foreign officials involved when designing its bid; and (6) the contractor will not pay any foreign officials directly, and will instead provide currency only to the relevant U.S. government officer.⁴⁵⁰

In Opinion Procedure Release 23-02, the DOJ indicated that it does not intend to take any enforcement action under the anti-bribery provisions of the FCPA based on the facts and circumstances presented.⁴⁵¹ First, the DOJ pointed to a lack of a corrupt intent, demonstrated at least in part by the belief that the Foreign Assistance Act of 1961 authorizes these stipend payments.⁴⁵² The DOJ also noted that the payments themselves were “called-for and ultimately delivered by” the U.S. government and not for the purpose of helping the contractor obtain or retain business.⁴⁵³

⁴⁴⁷ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

⁴⁴⁸ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

⁴⁴⁹ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

⁴⁵⁰ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

⁴⁵¹ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

⁴⁵² U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

⁴⁵³ U.S. Department of Justice, FCPA Opinion Proc. Rel. No. 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

C. Legislative Developments

1. The Countering Corporate Corruption in China Act

After initially introducing the Countering Corporate Corruption in China Act in February 2022,⁴⁵⁴ Senator Marco Rubio (R-FL) re-introduced the proposed legislation on January 31, 2023 in conjunction with seven other bills, “to protect American consumers, workers, and investors from exploitation by the Chinese Communist Party.”⁴⁵⁵ This legislation seeks to clarify that the definition of “corrupt practices” includes (1) “certain activity supporting human rights abuses by China against Uyghurs, Kazakhs, and members of other predominately Muslim ethnic groups; (2) certain activity supporting censorship or human rights abuses by China with respect to individuals in Hong Kong; (3) supporting certain territorial claims by China; (4) political advocacy in favor of the Chinese Communist Party; and (5) investing in specified Chinese entities.”⁴⁵⁶ The bill was referred to the Committee on Banking, Housing, and Urban Affairs and remains pending.⁴⁵⁷

2. The Retroactive Foreign Agents Registration Act

In July 2023, bipartisan groups in both the Senate and the House of Representatives introduced proposed legislation seeking to amend the Foreign Agents Registration Act in light of the District of Columbia District Court’s 2022 decision in *Attorney General of the United States v. Wynn*, which held that the United States was unable to require U.S. businessman Stephen Wynn to register as an agent of the People’s Republic of China after the agency relationship had ended.⁴⁵⁸ This proposed legislation, the Retroactive Foreign Agents Registration Act (RFARA), seeks to ensure that “people who failed to register as a foreign agent and have since stopped that work would still have to register to ensure their time as a foreign agent is reflected.”⁴⁵⁹ Senator Chuck Grassley (R-IA) introduced the bipartisan bill to the Senate, and the bill was referred to the Committee on Foreign Relations.⁴⁶⁰ In the House of Representatives, Representative Mike Gallagher (R-WI) introduced the companion bipartisan bill, which was referred to the House Committee on the Judiciary.⁴⁶¹ The RFARA remains pending in both the House of Representatives and the Senate.⁴⁶²

⁴⁵⁴ Countering Corporate Corruption in China Act of 2022, S. 3584, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/3584>.

⁴⁵⁵ Senator Marco Rubio, *Rubio Releases Agenda to Confront China’s Economic Aggression* (Jan. 31, 2023), <https://www.rubio.senate.gov/rubio-releases-agenda-to-confront-china-s-economic-aggression>.

⁴⁵⁶ Countering Corporate Corruption in China Act of 2023, S. 151, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/151/all-info>.

⁴⁵⁷ Countering Corporate Corruption in China Act of 2023, S. 151, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/151/all-info>.

⁴⁵⁸ *Att’y Gen. of the U.S. v. Wynn*, 636 F. Supp. 3d 96, 102 (D.D.C. 2022).

⁴⁵⁹ Congressman Mike Gallagher, *Gallagher rolls out ‘Retroactive Foreign Agents Registration Act’ with bipartisan support* (July 11, 2023), <https://gallagher.house.gov/media/in-the-news/gallagher-rolls-out-retroactive-foreign-agents-registration-act-bipartisan>.

⁴⁶⁰ Retroactive Foreign Agents Registration Act, S. 2229, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/2229/all-info>.

⁴⁶¹ Retroactive Foreign Agents Registration Act, H.R. 4545, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4545/all-info>.

⁴⁶² Retroactive Foreign Agents Registration Act, H.R. 4545, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4545/all-info>; Retroactive Foreign Agents Registration Act, S. 2229, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/2229/all-info>.

3. The Foreign Extortion Prevention Act

As a part of the National Defense Authorization Act, President Biden signed into law the Foreign Extortion Prevention Act (FEPA) on December 22, 2023, after Congress passed the legislation on December 14.⁴⁶³ Rather than modifying the FCPA, the FEPA amends the federal domestic bribery statute, 18 U.S.C. § 201, to answer long-standing calls to criminalize the “demand side” of foreign bribery by prohibiting foreign officials from seeking or accepting bribes in exchange for official acts or improper business advantages when certain jurisdictional touchpoints are present.⁴⁶⁴ A bipartisan group of legislators introduced the bill in both chambers on July 18, 2023 “to combat kleptocracy and corruption by criminalizing bribery demands by foreign officials.”⁴⁶⁵ Importantly, FEPA explicitly states that offenses under the statute are subject to extraterritorial federal jurisdiction. Under FEPA, foreign officials found to have violated the statute may face fines of up to \$250,000 or three times the monetary equivalent of the bribe and/or imprisonment for up to 15 years.⁴⁶⁶

V. COLLATERAL ACTIONS

In 2023, companies handling bribery-related allegations and government investigations continued to face private litigation, most commonly securities class actions by shareholders claiming material misstatements or omissions related to the alleged misconduct. There were also notable developments in RICO and restitution-related private litigation brought in prior years. In addition, the Eastern District of New York ruled that the “honest services fraud” criminal statute does not cover foreign commercial bribery.

A. Shareholder Suits

1. Ericsson

On May 24, 2023, a federal judge in the Eastern District of New York granted a motion by Ericsson and two of its former executives to dismiss a suit brought by a class of Ericsson investors.⁴⁶⁷ The plaintiffs’ complaint, filed in March 2022, alleged that Ericsson and the former executives misrepresented and omitted material information related to the company’s representations about its anti-bribery and corruption compliance generally and purported bribe payments made to ISIS to obtain a business advantage in Iraq.⁴⁶⁸ The complaint followed a February 2022 report published by the International Consortium of Investigative Journalists that detailed Ericsson’s alleged dealings with ISIS in Iraq,

⁴⁶³ For additional information regarding the FEPA, see WilmerHale, *Congress Enacts the Foreign Extortion Prevention Act Targeting Foreign Officials’ Conduct* (Dec. 21, 2023), <https://www.wilmerhale.com/insights/client-alerts/20231221-congress-enacts-the-foreign-extortion-prevention-act-targeting-foreign-officials-conduct>

⁴⁶⁴ National Defense Authorization Act for Fiscal Year 2024, H.R. 2670, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/2670/text>.

⁴⁶⁵ Senator Sheldon Whitehouse Press Release: Whitehouse, Tillis, Jackson Lee, and Wilson Lead Introduction of Bipartisan Bill to Fight Foreign Corruption (July 18, 2023), <https://www.whitehouse.senate.gov/news/release/whitehouse-tillis-jackson-lee-and-wilson-lead-introduction-of-bipartisan-bill-to-fight-foreign-corruption>.

⁴⁶⁶ National Defense Authorization Act for Fiscal Year 2024, H.R. 2670, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/2670/text>.

⁴⁶⁷ Decision & Order, *Nyy v. Telefonaktiebolaget LM Ericsson*, No. 22-CV-01167 (E.D.N.Y. May 24, 2023), ECF No. 58.

⁴⁶⁸ Compl., *Nyy v. Telefonaktiebolaget LM Ericsson*, No. 22-CV-01167 (E.D.N.Y. Mar. 3, 2022), ECF No. 1.

and Ericsson's disclosure on March 2, 2022 that the DOJ had informed the company that it had breached its 2019 DPA for failing to sufficiently disclose information related to its business in Iraq.⁴⁶⁹

The Eastern District of New York granted the defendants' motion to dismiss on the grounds that all of the purported misstatements and omissions were not actionable because the disclosures in question were too general to support a claim of securities fraud, included appropriate caveats or warnings, or were not false when made.⁴⁷⁰ The court additionally held that the plaintiffs had not alleged a sufficient level of scienter to sustain their claims.⁴⁷¹

On June 23, 2023, the plaintiffs filed an appeal of the motion to dismiss order to the Second Circuit, and briefing in the appeal occurred between October and December.⁴⁷² The court has yet to schedule oral arguments.

2. Odebrecht

In April 2023, the Southern District of New York awarded DoubleLine Capital (DoubleLine) \$67,335 in attorneys' fees for expenses incurred due to Odebrecht S.A. (Odebrecht)'s failure to comply with a discovery request.⁴⁷³ As discussed in our 2021 and 2022 Year-in-Reviews, Odebrecht, a Brazilian construction firm, pleaded guilty to having "paid approximately \$788 million in bribes in association with more than 100 projects in twelve countries" from 2006 through 2014.⁴⁷⁴ In June 2017, DoubleLine commenced a lawsuit against Odebrecht for alleged securities fraud in violation of Sections 10(b) and 20(a) of the Exchange Act.⁴⁷⁵ According to the plaintiffs' complaint, the offering memorandum for bonds sold to DoubleLine represented that Odebrecht obtained large public contracts due to their "business skills, expertise and efficiencies" when, in fact, the contracts were obtained because of Odebrecht's bribery scheme.⁴⁷⁶

⁴⁶⁹ Sydney P. Freedberg et al., *Leak exposes Ericsson's secret dealings with ISIS amid Iraq corruption spree*, International Consortium of Investigative Journalists (Feb. 27, 2022), <https://www.icij.org/investigations/ericsson-list/ericsson-leak-isis-iraq-corruption/>; Press Release, Ericsson, Update on Deferred Prosecution Agreement (Mar. 2, 2022), <https://www.ericsson.com/en/press-releases/2022/3/update-on-deferred-prosecution-agreement>. This matter is further discussed above in Section III.B.1.

⁴⁷⁰ Decision & Order, *Nyy v. Telefonaktiebolaget LM Ericsson*, No. 22-CV-01167, at 14-32 (E.D.N.Y. Mar. 3, 2022), ECF No. 58.

⁴⁷¹ Decision & Order, *Nyy v. Telefonaktiebolaget LM Ericsson*, No. 22-CV-01167 at 32-38 (E.D.N.Y. Mar. 3, 2022), ECF No. 58.

⁴⁷² Pl.'s Notice of Appeal, *Nyy v. Telefonaktiebolaget LM Ericsson*, No. 22-CV-01167 (E.D.N.Y. Mar. 3, 2022), ECF No. 60.

⁴⁷³ Memo. & Order, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. Apr. 10, 2023), ECF No. 290.

⁴⁷⁴ See WilmerHale, 2021 Global Anti-Bribery Year-in-Review (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>; see also Op. & Order, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 5 (S.D.N.Y. Mar. 30, 2021), ECF No. 182.

⁴⁷⁵ See WilmerHale, 2021 Global Anti-Bribery Year-in-Review (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; see also Compl., *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. June 16, 2017), ECF No. 1.

⁴⁷⁶ Compl., *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 2 (S.D.N.Y. June 16, 2017), ECF No. 1.

In the course of the litigation, Odebrecht was ordered to produce all non-privileged documents that it provided to the DOJ and other governmental and regulatory agencies pursuant to their investigations into Odebrecht's bribery scheme.⁴⁷⁷ Odebrecht failed to comply with the discovery order, asserting that such production was prohibited by Brazilian law.⁴⁷⁸ In July 2022, the court sanctioned Odebrecht, finding Odebrecht's noncompliance prejudiced DoubleLine's ability to prove that Odebrecht violated Sections 10(b) and 20(a) of the Exchange Act by making material misrepresentations or omissions.⁴⁷⁹ Following the sanction, the court ordered Odebrecht to pay plaintiffs' related attorneys' fees.⁴⁸⁰

More recently, in June 2023, Odebrecht filed a motion to exclude an expert opinion on the grounds that the expert's study was unreliable.⁴⁸¹ DoubleLine filed a response on July 5, 2023, requesting denial of this motion and Odebrecht filed a second memorandum in support of its motion on August 4, 2023.⁴⁸² The court has yet to rule on this motion.

3. Tenaris

In March 2023, Tenaris and two of its executives agreed to pay \$9.5 million to settle a securities class action filed in the Eastern District of New York.⁴⁸³ The suit began with a December 2018 complaint alleging material misstatements and omissions in Tenaris's securities filings following its CEO's indictment in Argentina in November 2018 for purportedly bribing Argentinian officials.⁴⁸⁴ According to the complaint, the defendants sought assistance from Argentinian officials in obtaining a compensation payment from the Venezuelan government for the nationalization of a Venezuelan steel company in which Tenaris held a majority stake.⁴⁸⁵ In August 2021, an Argentinian court later

⁴⁷⁷ See Op. & Order, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. Oct. 14, 2020), ECF No. 122; see also Op. & Order, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 14 (S.D.N.Y. July 29, 2022), ECF No. 265.

⁴⁷⁸ See WilmerHale, Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>; see also Op. & Order, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 2 (S.D.N.Y. July 29, 2022), ECF No. 265.

⁴⁷⁹ See WilmerHale, Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>; see also Op. & Order, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 4 (S.D.N.Y. July 29, 2022), ECF No. 265.

⁴⁸⁰ Memo. & Order, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 11 (S.D.N.Y. Apr. 10, 2023), ECF No. 290.

⁴⁸¹ Memo. in Support of Def.'s Motion to Exclude Pl.'s Expert Opinions, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576, at 10-17 (S.D.N.Y. June 5, 2023), ECF No. 292.

⁴⁸² See Pl.'s Opposition to Def.'s Motion to Exclude Pl.'s Expert Opinions, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. July 5, 2023), ECF No. 294; see also Def.'s Reply Memo. in Support of Def.'s Motion to Exclude Pl.'s Expert Opinions, *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, No. 17-CV-04576 (S.D.N.Y. Aug. 4, 2023), ECF No. 295.

⁴⁸³ Pl.'s Notice of Unopposed Motion for (I) Preliminary Approval of Class Action Settlement; (II) Cert. of Settlement Class; and (III) Approval of Notice to Settlement Class, *Atanasio v. Tenaris S.A.*, No. 18-CV-07059 (E.D.N.Y. Mar. 10, 2023), ECF No. 109.

⁴⁸⁴ Compl., *Atanasio v. Tenaris S.A.*, No. 18-CV-07059 (E.D.N.Y. Dec. 12, 2018), ECF No. 1.

⁴⁸⁵ Compl., *Atanasio v. Tenaris S.A.*, No. 18-CV-07059, at 9, (E.D.N.Y. Dec. 12, 2018), ECF No. 1.

acquitted the CEO of all charges.⁴⁸⁶ In 2022, Tenaris resolved unrelated charges with the SEC concerning alleged FCPA misconduct related to Petrobras in Brazil.⁴⁸⁷

According to the plaintiffs' memorandum in support of its motion for settlement, the \$9.5 million settlement represented "a recovery of approximately 4.02%-5.01% of the maximum recoverable damages" but was fair because "[t]he risk of losing was very real and it was greatly enhanced by the fact that [plaintiffs] would be litigating against a corporate defendant represented by highly skilled defense counsel" and "key third-party witnesses were located in countries not subject to the Hague Convention."⁴⁸⁸ For those reasons, the plaintiffs concluded, there was "a very strong possibility that the case would yield little or no recovery after many years of costly litigation."⁴⁸⁹

On April 10, 2023, the court preliminarily approved the settlement.⁴⁹⁰ In the subsequent October 19, 2023 settlement hearing, the court indicated that it was "very likely" to approve the proposed settlement, but reserved making a final decision to give more time for the entire class to consider the settlement and to handle outstanding questions related to claims processing.⁴⁹¹ At the meeting, the court directed the plaintiffs to submit an update letter on or before March 29, 2024.⁴⁹²

4. VEON

In February 2023, in a suit brought by shareholders against VEON (formerly VimpelCom), the Southern District of New York denied a group of plaintiffs' motion for reconsideration of the judge-appointed lead plaintiff.⁴⁹³ As discussed in our 2021 Year-in-Review, in February 2016, VEON pleaded guilty to charges relating to multiple FCPA violations and entered into a DPA with the DOJ.⁴⁹⁴ According to the DPA, VEON made improper payments to the eldest daughter of Uzbekistan's President in an effort to obtain a business advantage in Uzbekistan's telecommunications

⁴⁸⁶ Tenaris Press Release: *Argentine Court acquits Tenaris's CEO and Chairman in the Notebooks Case* (Aug. 17, 2021), <https://ir.tenaris.com/news-releases/news-release-details/argentine-court-acquits-tenariss-ceo-and-chairman-notebooks-case>.

⁴⁸⁷ U.S. Securities and Exchange Commission Press Release 2022-98: SEC Charges Global Steel Pipe Manufacturer with Violating Foreign Corrupt Practices Act (June 2, 2022), <https://www.sec.gov/news/press-release/2022-98>.

⁴⁸⁸ Pl.'s Memo. of Law in Support of Pl.'s Unopposed Motion for (I) Preliminary Approval of Class Action Settlement; (II) Cert. of Settlement Class; and (III) Approval of Notice to Settlement Class (Mar. 10, 2023), *Atanasio v. Tenaris et al.*, No. 18-CV-07059, at 8 (E.D.N.Y. Mar. 10, 2023), ECF No. 110.

⁴⁸⁹ Pl.'s Memo. of Law in Support of Pl.'s Unopposed Motion for (I) Preliminary Approval of Class Action Settlement; (II) Cert. of Settlement Class; and (III) Approval of Notice to Settlement Class (Mar. 10, 2023), *Atanasio v. Tenaris et al.*, No. 18-CV-07059, at 8 (E.D.N.Y. Mar. 10, 2023), ECF No. 110.

⁴⁹⁰ Order Preliminarily Approving Settlement, *Atanasio v. Tenaris S.A.*, No. 18-CV-07059 (E.D.N.Y. Apr. 10, 2023), ECF No. 112.

⁴⁹¹ Minute Entry for Proceedings Held Before Judge K. A. Matsumoto: Settlement Conference Held on 10/19/2023, *Atanasio v. Tenaris S.A.*, No. 18-CV-07059 (E.D.N.Y. Oct. 20, 2023).

⁴⁹² Minute Entry for Proceedings Held Before Judge K. A. Matsumoto: Settlement Conference Held on 10/19/2023, *Atanasio v. Tenaris S.A.*, No. 18-CV-07059 (E.D.N.Y. Oct. 20, 2023).

⁴⁹³ Order on Reconsideration, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672 (S.D.N.Y. Feb. 17, 2023), ECF No. 219.

⁴⁹⁴ See WilmerHale, 2021 Global Anti-Bribery Year-in-Review (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; see also Op. & Order, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672 (S.D.N.Y. Mar. 11, 2021), ECF No. 170.

market.⁴⁹⁵ The settlement led to the commencement of a shareholders' class action suit against the company alleging securities fraud pursuant to Section 10(b) of the Exchange Act. Specifically, the shareholders alleged that VEON made material omissions in its securities filings by failing to disclose the bribery-related conduct to which the company admitted in the DPA, as well as admissions that it made false entries in its books and lacked proper internal accounting controls.⁴⁹⁶

In March 2021, the court dismissed the lead plaintiff, Westway Alliance Corp., for lack of standing and re-opened the plaintiff selection process.⁴⁹⁷ In April 2022, the court appointed Boris Lvov as lead plaintiff and denied a request to be lead plaintiffs from a group comprised of Sherman Steele, Leonard Karpwicz, and Stan Sinitza (collectively, SKS), holding that SKS could not adequately represent the class because they were not added as plaintiffs until five years after the class period ended, making their class claims barred by the statute of limitations.⁴⁹⁸ SKS moved for reconsideration of the order on May 13, 2022 but were denied on February 17, 2023.⁴⁹⁹

In March 2023, Mr. Lvov filed a third amended complaint that added several new allegations.⁵⁰⁰ VEON subsequently filed a motion to dismiss, arguing that Mr. Lvov's new allegations were barred by the statute of repose and that the court should restore the case to where it had been when the court ruled on the first motion to dismiss.⁵⁰¹ On July 18, 2023, Mr. Lvov filed a notice of supplemental authority asking the court to deny VEON's motion based on the Tenth Circuit's decision in *Hogan v. Pilgrim's Pride Corp.* and contending that the plaintiff's allegations were not "new" but rather "added factual allegations to support [p]laintiff's existing claims."⁵⁰² In response, VEON filed a letter asserting that *Hogan* had no precedential value and, in fact, supported VEON's position that the new allegations should be barred by the statute of repose.⁵⁰³ According to the letter, Mr. Lvov's allegations were still "new" because, unlike *Hogan*, the plaintiff had not uncovered any new evidence explaining why the allegations were not made in previous complaints.⁵⁰⁴ The court has yet to rule on VEON's motion to dismiss.

⁴⁹⁵ See WilmerHale, 2021 Global Anti-Bribery Year-in-Review (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; see also Op. & Order, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672 (S.D.N.Y. Mar. 11, 2021), ECF No. 170.

⁴⁹⁶ See WilmerHale, 2021 Global Anti-Bribery Year-in-Review (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; see also Op. & Order, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. Mar. 11, 2021), ECF No. 170.

⁴⁹⁷ Op. & Order, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 7 (S.D.N.Y. Mar. 11, 2021), ECF No. 170.

⁴⁹⁸ Op. & Order, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1, 8 (S.D.N.Y. Apr. 29, 2022), ECF No. 186.

⁴⁹⁹ See Named Pl.'s Memo. of Law in Support of Named Pl.'s Motion for Reconsideration, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. May 13, 2022), ECF No. 191; see also Order on Reconsideration, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. Feb. 17, 2023), ECF No. 219.

⁵⁰⁰ Third Amend. Complaint, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672 (S.D.N.Y. Mar. 1, 2023), ECF No. 221.

⁵⁰¹ Memo. of Law in Support of Def.'s Motion to Dismiss, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. May 12, 2023), ECF No. 242.

⁵⁰² Notice of Supp. Auth., *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 2 (S.D.N.Y. July 18, 2023), ECF No. 245.

⁵⁰³ Letter re Boris Lvov's July 18, 2023 letter, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. July 18, 2023), ECF No. 246.

⁵⁰⁴ Letter re Boris Lvov's July 18, 2023 letter, *In re Veon Ltd. Sec. Litig.*, No. 15-CV-08672, at 1 (S.D.N.Y. July 18, 2023), ECF No. 246.

B. RICO Suits – Petrobras

On August 11, 2023, the Southern District of Texas dismissed with prejudice a Petrobras subsidiary's RICO claims against Samsung.⁵⁰⁵ While acknowledging that the case involved “systematic corruption on a large scale” by Samsung, the court ultimately found that the Petrobras subsidiary had not met the elements to recover under RICO because it had not shown that Samsung's conduct was the proximate cause of its purported injuries.⁵⁰⁶

The claims were originally brought in a March 2019 complaint alleging that Samsung had paid bribes to Petrobras officials so that Petrobras would enter into a drilling services contract with another company, Pride Global (Pride).⁵⁰⁷ Samsung purportedly sought to facilitate this agreement because Pride demanded its contract with Petrobras be in place before it would agree to commission and purchase a drillship from Samsung.⁵⁰⁸ Instead, Petrobras later assigned the contract to the Petrobras subsidiary (the plaintiff in the action) via an assignment agreement, and the subsidiary alleged that it suffered injuries as a result of Samsung's conduct because, but for Samsung's bribes to the Petrobras officials, it would not have been liable under an unneeded and unfavorable contract.⁵⁰⁹ In dismissing these claims, the court noted that Samsung's conduct was too far removed from the assignment agreement between Petrobras and its subsidiary to be the cause of the purported injuries because, among other things, Samsung never paid any bribes to the Petrobras subsidiary and never paid any party in connection with the assignment agreement.⁵¹⁰

In September 2023, the plaintiff appealed to the Fifth Circuit,⁵¹¹ filing the second appeal of a dismissal in this case. As discussed in our 2020 and 2021 Year-in-Reviews, the Southern District of Texas previously dismissed the suit in June 2020 on the grounds that the Petrobras subsidiary was on notice in 2014 regarding the facts that underpinned the RICO claims, which triggered the statute of limitations that had since expired.⁵¹² In August 2021, the Fifth Circuit overturned the dismissal and remanded the case back to the district court for further proceedings, finding that there

⁵⁰⁵ Final Judgment, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410 (S.D. Tex. Aug. 11, 2023), ECF No. 235.

⁵⁰⁶ Memo. & Opinion, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410, at 1-2 (S.D. Tex. Aug. 11, 2023), ECF No. 234.

⁵⁰⁷ Memo. & Opinion, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410, at 2, 13 (S.D. Tex. Aug. 11, 2023), ECF No. 234.

⁵⁰⁸ Memo. & Opinion, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410, at 2, 13 (S.D. Tex. Aug. 11, 2023), ECF No. 234.

⁵⁰⁹ Memo. & Opinion, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410, at 2, 13 (S.D. Tex. Aug. 11, 2023), ECF No. 234.

⁵¹⁰ Memo. & Opinion, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410, at 17-25 (S.D. Tex. Aug. 11, 2023), ECF No. 234.

⁵¹¹ Pl.'s Notice of Appeal, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410 (S.D. Tex. Sept. 22, 2023), ECF No. 244.

⁵¹² See WilmerHale, 2021 Global Anti-Bribery Year-in-Review (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; WilmerHale, Global Anti-Bribery Year-in-Review: 2020 Developments and Predictions for 2021 (Jan. 28, 2021), <https://www.wilmerhale.com/en/insights/client-alerts/20210126-2020-global-antibribery-yearinreview>; see also Memo. & Opinion, *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, No. 19-CV-01410; (S.D. Tex. June 19, 2020).

was sufficient uncertainty as to when the subsidiary discovered the alleged injuries such that a dismissal on the grounds that the statute of limitations had expired was improper.⁵¹³

C. Use of Honest Services Fraud to Prosecute Foreign Bribery – FIFA

On September 1, 2023, the Eastern District of New York granted the acquittal of two of the defendants in a yearslong prosecution related to alleged corruption within the Fédération Internationale de Football Association (FIFA) following Supreme Court decisions signaling limits on the scope of honest services wire fraud.⁵¹⁴ The criminal litigation began in May 2015 with the indictment of multiple FIFA officials and sports media executives for their alleged participation in bribery schemes related to international soccer tournaments.⁵¹⁵ In the following years, several indicted individuals chose to cooperate with the DOJ and take plea deals, others were convicted at trial, and a grand jury returned multiple superseding indictments.⁵¹⁶

On March 18, 2020, the third superseding indictment in the matter added charges against Full Play Group SA (Full Play), a South American sports media and marketing company, and two U.S. citizen executives of a subsidiary of Twenty-First Century Fox, Inc., including charges of conspiracy to commit honest services wire fraud.⁵¹⁷ On March 9, 2023, after a seven-week trial, a jury found Full Play and one of the executives guilty on all counts charged against them, and they subsequently moved for judgments of acquittal pursuant to Federal Rule of Criminal Procedure 29 on February 23, 2023, and April 21, 2023, respectively.⁵¹⁸

In granting the defendants' motions, the court noted that there was insufficient evidence to convict the defendants because 18 U.S.C. § 1346—which states that the language “scheme or artifice to defraud” found in the federal mail and wire fraud statutes includes such schemes intended to “deprive another of the intangible right of honest services”—does not extend to foreign commercial bribery.⁵¹⁹ In reaching this decision, the court referenced two Supreme Court cases decided on May 11, 2023, *Ciminelli v. United States*, 598 U.S. 306 (2023), and *Percoco v. United States*, 598 U.S. 319 (2023), noting that the Supreme Court’s “strongly worded rebukes . . . against expanding

⁵¹³ See WilmerHale, 2021 Global Anti-Bribery Year-in-Review (Jan. 27, 2022), <https://www.wilmerhale.com/insights/client-alerts/20220127-2021-global-anti-bribery-year-in-review>; see also *Petrobras Am., Inc. v. Samsung Heavy Indus. Co., Ltd.*, 9 F.4th 247, 251 (5th Cir. 2021).

⁵¹⁴ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252 (E.D.N.Y. Sept. 1, 2023), ECF No. 2023.

⁵¹⁵ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252, at 2 (E.D.N.Y. Sept. 1, 2023), ECF No. 2023.

⁵¹⁶ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252, at 2 (E.D.N.Y. Sept. 1, 2023), ECF No. 2023.

⁵¹⁷ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252, at 3 (E.D.N.Y. Sept. 1, 2023), ECF No. 2023.

⁵¹⁸ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252, at 27 (E.D.N.Y. Sept. 1, 2023), ECF No. 2023.

⁵¹⁹ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252, at 29 (E.D.N.Y. Sept. 1, 2023), ECF No. 2023; 18 U.S.C. § 1346

the federal wire fraud statutes,” along with the absence of authority in support of the assertion that honest services fraud extends to foreign commercial bribery, compelled the court to find that § 1346 did not apply.⁵²⁰

On September 22, 2023, prosecutors issued notices of appeal to the acquitted defendants, and on January 3, 2024, they filed their first substantive brief with the Second Circuit Court of Appeals.⁵²¹ Among other arguments, prosecutors argued in their brief that the lower court erred in basing its decision for acquittal on *Ciminelli* and *Percoco*, because neither opinion directly addressed or considered analogous facts or found that honest services wire fraud can never encompass foreign commercial bribery.⁵²² Prosecutors also claimed that the lower court had erroneously disregarded relevant precedent from the Second Circuit that had “rejected a Rule 29 sufficiency-of-the-evidence challenge made on near-identical grounds in the same case, in the context of defendants who were bribe recipients in the same conspiracies at issue here.”⁵²³ The appellees’ reply briefs are due by April 2, 2024.⁵²⁴

D. Restitution – Glencore and Crusader Health RDC

In February 2023, the Southern District of New York ordered Glencore International AG (Glencore) to pay approximately \$39.8 million in restitution and prejudgment interest to Crusader Health RDC SARL (Crusader DRC) in relation to alleged bribery of a public official in the Democratic Republic of the Congo (DRC).⁵²⁵ The owners of Crusader DRC had filed a lawsuit in the DRC for breach of contract, seeking more than \$16 million in restitution from Glencore’s DRC subsidiary.⁵²⁶ In November 2010, Glencore employees overseeing the subsidiary allegedly made an improper payment of \$500,000 to a DRC public official to get this lawsuit dismissed, and the DRC court subsequently decided the dispute in the subsidiary’s favor in January 2011.⁵²⁷ On November 28, 2018, an individual plaintiff filed a separate suit against the subsidiary on behalf of Crusader DRC in a different DRC court for reimbursement of contractual amounts and other damages.⁵²⁸ On December 31, 2019, the court ruled in favor of Crusader DRC and

⁵²⁰ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252, at 48 (E.D.N.Y. Sept. 1, 2023), ECF No. 2023.

⁵²¹ Order, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 15-CR-252 (E.D.N.Y. Sept. 22, 2023), ECF No. 2028; Appellant Brief & Special Appendix, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 23-7186 (2d Cir. Jan. 3, 2024), ECF No. 30.

⁵²² Appellant Brief & Special Appendix, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 23-7186, at 46 (2d Cir. Jan. 3, 2024), ECF No. 30.

⁵²³ Appellant Brief & Special Appendix, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 23-7186, at 46 (2d Cir. Jan. 3, 2024), ECF No. 30; *see also United States v. Napout*, 963 F.3d 163 (2d Cir. 2020).

⁵²⁴ Scheduling Notification, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 23-7186 (2d Cir. Jan. 8, 2024), ECF No. 42; Scheduling Notification, *United States v. Full Play Group, S.A. and Hernan Lopez*, No. 23-7186 (2d Cir. Jan. 11, 2024), ECF No. 50.

⁵²⁵ Op. & Order, *United States v. Glencore Int’l A.G.*, No. 22-CR-00297 (S.D.N.Y. Feb. 27, 2023), ECF No. 38.

⁵²⁶ *See WilmerHale*, Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>; Victim Impact Statement & Request for Restitution, *United States v. Glencore Int’l A.G.*, No. 22-CR-00297, at 11 (S.D.N.Y. Oct. 25, 2022), ECF No. 18.

⁵²⁷ *See WilmerHale*, Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>; Victim Impact Statement & Request for Restitution, *United States v. Glencore Int’l A.G.*, No. 22-CR-00297, at 14 (S.D.N.Y. Oct. 25, 2022), ECF No. 18.

⁵²⁸ Op. & Order, *United States v. Glencore Int’l A.G.*, No. 22-CR-00297, at 4 (S.D.N.Y. Feb. 27, 2023), ECF No. 38.

awarded approximately \$10.9 million in damages.⁵²⁹ In October 2022, Crusader DRC filed a Victim Impact Statement and Request for Restitution in Glencore's FCPA proceeding in the Southern District of New York, seeking \$48 to \$50 million pursuant to the Mandatory Victims Restitution Act and the Crime Victims' Rights Act.⁵³⁰ This led to the February 2023 award, which was conditioned on Crusader DRC withdrawing the \$10.9 million judgment and agreeing not to seek any further relief in the DRC.⁵³¹ On August 11, 2023, the DRC court issued a decision acknowledging Crusader DRC's waiver of its right to invoke and enforce the judgment.⁵³²

VI. KEY INTERNATIONAL LEGAL DEVELOPMENTS

A. United Kingdom

1. Legislative and Policy Developments

a. Economic Crime and Corporate Transparency Act 2023

On October 26, 2023, the long-awaited Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023)⁵³³ became law in the UK, introducing key reforms to the UK's corporate crime landscape. The Director of the Serious Fraud Office (SFO) described it as "the most significant boost to the SFO's ability to investigate and prosecute serious economic crime in over 10 years."⁵³⁴

b. Expansion of the SFO's Pre-Investigation Powers

Under Section 2A of the Criminal Justice Act 1987,⁵³⁵ the SFO has the power to compel parties to provide information and documents to enable the SFO to determine whether to start an investigation. Previously, the SFO could exercise this power only in cases involving international bribery and corruption. For suspected fraud and domestic bribery cases, the SFO relied on the voluntary provision of information during the pre-investigation stage.

Section 211 of ECCTA 2023 expands the SFO's powers,⁵³⁶ enabling it to compel the provision of information in all potential SFO cases. This reform will likely allow the SFO to identify criminal conduct more promptly and progress through the early stages of investigations with greater speed.

⁵²⁹ Op. & Order, *United States v. Glencore Int'l A.G.*, No. 22-CR-00297, at 5 (S.D.N.Y. Feb. 27, 2023), ECF No. 38.

⁵³⁰ Victim Impact Statement & Request for Restitution, *United States v. Glencore Int'l A.G.*, No. 22-CR-00297 (S.D.N.Y. Oct. 25, 2022), ECF No. 18.

⁵³¹ Op. & Order, *United States v. Glencore Int'l A.G.*, No. 22-CR-00297, at 21 (S.D.N.Y. Feb. 27, 2023), ECF No. 38.

⁵³² Letter by Glencore, *United States v. Glencore Int'l A.G.*, No. 22-CR-00297 (S.D.N.Y. Aug. 15, 2023), ECF No. 59.

⁵³³ Economic Crime and Corporate Transparency Act 2023, <https://www.legislation.gov.uk/ukpga/2023/56/enacted>.

⁵³⁴ WilmerHale, *Radical reforms of UK corporate criminal liability receive Royal Assent*, (Oct. 30, 2023), <https://www.wilmerhale.com/en/insights/client-alerts/20231030-radical-reforms-of-uk-corporate-criminal-liability-receive-royal-assent>.

⁵³⁵ Section 2A, Criminal Justice Act 1987, <https://www.legislation.gov.uk/ukpga/1987/38/section/2A>.

⁵³⁶ Section 211, Economic Crime and Corporate Transparency Act 2023, <https://www.legislation.gov.uk/ukpga/2023/56/section/211/enacted>.

c. New Offense of Failure to Prevent Fraud

Section 199 of ECCTA 2023⁵³⁷ introduces a new corporate criminal offense of “failure to prevent fraud,” which is intended to mirror the UK’s existing “failure to prevent” offenses as to bribery and the facilitation of tax evasion.

Under the new offense, a “large”⁵³⁸ organization could incur criminal liability if a person associated with the company commits a specified fraud offense with the intent to benefit the company. This is a strict liability offense, meaning it is not necessary to establish that the company had awareness of the underlying fraud. Importantly, an organization will have a defence if it can show that it had “prevention procedures” in place to prevent fraud from occurring.⁵³⁹ The offense will not come into force until the UK government publishes further guidance on what such “prevention procedures” might constitute. This guidance is expected in 2024.

d. Broadening of the Identification Doctrine

ECCTA 2023 also amends the “identification doctrine” which is the UK’s primary means of attributing criminal liability to corporations. Previously, it was necessary for a prosecutor to show that criminal conduct was carried out by a person representing the “directing mind and will” of the corporation. Now, per Section 196 of ECCTA 2023, if a “senior manager”⁵⁴⁰ is acting within the actual or apparent scope of their authority and commits a relevant offense, the corporation will also be guilty of the offense.⁵⁴¹

Historically, prosecutors have struggled to overcome the “controlling mind” test, with the former Director of the SFO previously stated that it “[makes] it very difficult to hold companies with complex governance structures to account for their fraudulent conduct.”⁵⁴² It is yet to be seen whether the amended doctrine will be easier to navigate.

2. Enforcement Developments

a. New SFO Director

On September 25, 2023, Lisa Osofsky’s five-year tenure as Director of the SFO came to an end. Osofsky leaves behind a mixed record, with notable successes offset by high-profile failings and scandals. While she was at the helm, the SFO secured 29 convictions and eight DPAs. A highlight of her directorship was the SFO’s 2020

⁵³⁷ Section 199, Economic Crime and Corporate Transparency Act 2023, <https://www.legislation.gov.uk/ukpga/2023/56/section/199/enacted>.

⁵³⁸ A relevant body is a “large organization” if it satisfies two or more of the following conditions in the financial year preceding the offense: (1) Turnover over £36 million; (2) Balance sheet over £18 million; and/or (3) More than 250 employees. Section 201, Economic Crime and Corporate Transparency Act 2023, <https://www.legislation.gov.uk/ukpga/2023/56/section/201/enacted>.

⁵³⁹ Section 199, Economic Crime and Corporate Transparency Act 2023, <https://www.legislation.gov.uk/ukpga/2023/56/section/199/enacted>.

⁵⁴⁰ A senior manager, in this context, is a person who plays a significant role in (i) the making of decisions about how the whole or a substantial part of the activities of the corporation are to be managed or organized, or (ii) the actual managing or organizing of the whole or a substantial part of those activities. Section 196(4), Economic Crime and Corporate Transparency Act 2023, <https://www.legislation.gov.uk/ukpga/2023/56/section/196/enacted>.

⁵⁴¹ Section 196, Economic Crime and Corporate Transparency Act 2023, <https://www.legislation.gov.uk/ukpga/2023/56/section/196/enacted>.

⁵⁴² Lisa Osofsky, former Director of the SFO, Remarks on Future Challenges in Economic Crime: A View from the SFO (Oct. 8 2020), <https://www.sfo.gov.uk/2020/10/09/future-challenges-in-economic-crime-a-view-from-the-sfo>.

collaboration with U.S. and French enforcement partners to impose a record-breaking €3.6 billion (approximately \$4 billion) penalty on Airbus for bribery offenses.⁵⁴³

However, Osofsky's term at the SFO has also been bookended by closures of high-profile, long-running investigations. And the SFO caseload significantly declined under Osofsky, with the number of active cases dropping from approximately 75 in the year she arrived to 35 in the year of her departure.⁵⁴⁴ She was also subject to significant personal criticism during her time as Director. For example, the Calvert-Smith Report, published in July 2022, found that Osofsky "made a number of mistakes and misjudgments" which contributed to the overturning of the convictions of the individuals involved in the Unaoil investigations (see further discussion in Section IV.A).⁵⁴⁵

Osofsky's successor is Nick Ephgrave, who takes on leadership of the SFO for the next five years. With a three-decade career in the police force, Ephgrave is the first non-lawyer to direct the SFO. His depth of experience with the U.K. criminal justice system distinguishes him from Osofsky, whose relative unfamiliarity with the system was cited in times of failure. Upon taking his role, Ephgrave expressed his commitment to building a "strong, dynamic, and pragmatic" SFO,⁵⁴⁶ and given his policing background, he may rely on different enforcement tools—like raids and arrests—and different enforcement priorities as compared to previous Directors. Indeed, on November 14, 2023, the SFO carried out nine early-morning raids and arrested seven individuals, marking the launch of a criminal investigation into collapsed law firm Axiom Ince.⁵⁴⁷

b. Corporate Enforcement

i. SFO Drops Cases

On August 24, 2023, the SFO dropped two of its cases, both involving mining companies.⁵⁴⁸ First, the SFO closed its investigation into Eurasian Natural Resource Corp. (ENRC), which had launched in April 2013 and was one of the

⁵⁴³ UK Serious Fraud Office Case Update: SFO enters into €991m Deferred Prosecution Agreement with Airbus as part of a €3.6bn global resolution (Jan. 31, 2020), <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution>.

⁵⁴⁴ UK Serious Fraud Office Annual Report, 2017-18 (July 24, 2018), <https://www.sfo.gov.uk/download/annual-report-2017-2018/>; UK Serious Fraud Office Annual Report, 2022-23 (July 18, 2023), <https://www.sfo.gov.uk/download/annual-report-accounts-2022-23>.

⁵⁴⁵ Sir David Calvert-Smith, Independent Review into SFO's Handling of the Unaoil case – R v Akle & Anor, ¶ 24 (July 2022), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092872/DCS_report_-_FINAL_-_21_July_08.31_.pdf.

⁵⁴⁶ UK Serious Fraud Office News Release: Nick Ephgrave QPM begins tenure as Director of the Serious Fraud Office (Sept. 25, 2023), <https://www.sfo.gov.uk/2023/09/25/nick-ephgrave-qpm-begins-tenure-as-director-of-the-serious-fraud-office>.

⁵⁴⁷ The UK's Solicitors Regulation Authority shut down Axiom Ince on October 3, 2023, in connection with a shortage of approximately £66 million (approximately \$84 million) from the firm's client accounts. At the time of its closure, Axiom Ince employed over 1,400 staff. UK Serious Fraud Office Press Release: Serious Fraud Office launches investigation into suspected fraud at Axiom Ince with nine raids and seven arrests (Nov. 14, 2023), <https://www.sfo.gov.uk/2023/11/14/serious-fraud-office-launches-investigation-into-suspected-fraud-at-axiom-ince-with-nine-raids-and-seven-arrests>.

⁵⁴⁸ Harry Davies and David Pegg, *Serious Fraud Office drops 10-year corruption inquiry into Kazakh miner ENRC*, THE GUARDIAN (Aug. 24, 2023), <https://www.theguardian.com/business/2023/aug/24/serious-office-drops-corruption-inquiry-kazah-miner-enrc-rio-tinto-investigation-uk>.

longest-running cases in the SFO's history.⁵⁴⁹ The investigation focused on the suspected payment of bribes to secure mining contracts in the DRC between 2009 and 2012. Over the decade-plus that the case was open, multiple high-profile litigations ensued, involving ENRC, the SFO, and ENRC's former lawyers. The SFO announced that its closure of the investigation was due to "insufficient admissible evidence to prosecute."⁵⁵⁰

On the same day, the SFO also announced that it had concluded, following a review of its investigation into the second company, that it was "not in the public interest to proceed with a prosecution" following a review of its investigation into the second company.⁵⁵¹ The mining company had been the subject of an SFO investigation since 2017 in relation to suspected corruption in relation to its business in the Republic of Guinea.

ii. First Non-SFO DPA

The SFO did not enter into any DPAs in 2023 for the second year in a row. It is not yet clear whether this is indicative of a change in approach for the SFO, which had previously made DPAs a key part of its enforcement approach against corporations. As it can take years to progress an investigation to the stage where a DPA might be reached, little can be concluded from a two-year lapse.

However, the SFO is not the only U.K. enforcement agency with the power to enter into DPAs, as evidenced by the investigation conducted by His Majesty's Revenue & Customs (HMRC) into the gambling company Entain Plc. HMRC's investigation related to alleged crimes that included bribery offenses involving a "Turkish-facing" online betting business that Entain sold in 2017. This bribery probe illustrates the broad investigatory mandate of HMRC as the U.K.'s tax, payments, and customs authority.

On December 5, 2023, a DPA between Entain and the CPS was finalized and approved.⁵⁵² It is the first of its kind to have been negotiated and agreed by the CPS, with the SFO securing all 12 previous DPAs since their introduction in the UK in 2014. Under the DPA's terms, Entain will pay a total of £615 million (approximately \$777 million) in penalties, disgorgement, and other payments, which amounts to the second largest corporate settlement ever reached in the UK.⁵⁵³

c. Individual Enforcement

i. Post-DPA conviction of an individual

In early March 2023, the SFO announced its first conviction of an individual following a corporate DPA—in this instance, two DPAs that the SFO entered with Bluu Solutions Limited (BSL) and its sister company Tetris Projects

⁵⁴⁹ UK Serious Fraud Office Case Update: ENRC Ltd (updated Aug. 24, 2023), <https://www.sfo.gov.uk/cases/enrc>.

⁵⁵⁰ UK Serious Fraud Office Case Update: ENRC Ltd (updated Aug. 24, 2023), <https://www.sfo.gov.uk/cases/enrc>.

⁵⁵¹ UK Serious Fraud Office Case Update: Rio Tinto group (updated Aug. 24, 2023), <https://www.sfo.gov.uk/cases/rio-tinto-group>.

⁵⁵² UK Criminal Prosecution Service Press Release: First ever CPS deferred prosecution agreement for £615 million (Dec. 5, 2023), <https://www.cps.gov.uk/cps/news/first-ever-cps-deferred-prosecution-agreement-ps615-million>.

⁵⁵³ The payment consists of a £585 million (approximately \$740 million) financial penalty and disgorgement of profits, plus £10 million towards the CPS and HMRC costs and a £20 million (approximately \$25 million) charitable donation.

Limited (TPL) in July 2021.⁵⁵⁴ Under the terms of the DPAs, the companies accepted responsibility for bribery offenses and agreed to pay the SFO a combined total of £2.5 million (approximately \$3.2 million). The SFO subsequently charged five individuals in relation to the case, including Roger Dewhirst, who allegedly accepted bribes from BSL and TPL in exchange for office refurbishment contracts between 2014 and 2016. In May 2022, Dewhirst pleaded guilty to two counts of accepting bribes, although reporting restrictions prevented publication of Dewhirst's guilty plea until March 2023. On June 5, 2023, Dewhirst was sentenced to nine months imprisonment, suspended for 18 months.⁵⁵⁵

While this is a significant step, it does not necessarily vindicate the SFO's track record so far in this area. Dewhirst's guilty plea means that the SFO is yet to emerge victorious in a contested trial of an individual following a DPA. The SFO charged three of Dewhirst's co-defendants with bribery but all three were acquitted after trial in January 2023. Dewhirst's wife had also initially faced money laundering charges, which were dropped before trial.

On March 10, 2023, just a week after Dewhirst's conviction was revealed, another example of the SFO's difficulties in securing post-DPA individual convictions emerged when the SFO informed the court that it was offering no evidence in its prosecution of three former senior managers at G4S, causing the trial to be abandoned.⁵⁵⁶ The corporation had entered into a DPA relating to fraud offenses in July 2020.⁵⁵⁷ At the point the charges were dropped, the investigation had been ongoing for nearly 10 years.

ii. Upcoming Bribery Cases

On June 2, 2023, the SFO brought bribery charges against three former employees of London Mining plc.⁵⁵⁸ The company's former CEO, Graeme Hossie, and CFO, Rachel Rhodes, face two charges each of conspiring to "give monetary payments to public officials or other agents of the government of Sierra Leone" as inducements or rewards for showing favor to the business. Ariel Armon, a former international business consultant at the company, faces one count of the same offense. All three entered not guilty pleas on October 6, 2023. The trial is currently set for January 2025.

⁵⁵⁴ UK Serious Fraud Office Press Release: SFO secures two DPAs with companies for Bribery Act offences (July 20, 2021), <https://www.sfo.gov.uk/2021/07/20/sfo-secures-two-dpas-with-companies-for-bribery-act-offences>.

⁵⁵⁵ Sam Fry, *SFO secures conviction in office refurbishment bribery case*, GLOBAL INVESTIGATIONS REV. (Feb. 13, 2023), <https://globalinvestigationsreview.com/article/sfo-secures-conviction-in-office-refurbishment-bribery-case>.

⁵⁵⁶ Sam Fry, *Former G4S execs acquitted after SFO ends prosecution*, GLOBAL INVESTIGATIONS REV. (Mar. 10, 2023), <https://globalinvestigationsreview.com/article/former-g4s-execs-acquitted-after-sfo-ends-prosecution>.

⁵⁵⁷ UK Serious Fraud Office News Release: SFO receives approval for DPA with G4S Care & Justice Services (UK) Ltd (July 17, 2020), <https://www.sfo.gov.uk/2020/07/17/sfo-receives-final-approval-for-dpa-with-g4s-care-justice-services-uk-ltd>.

⁵⁵⁸ UK Serious Fraud Office Press Release: Serious Fraud Office charges former CEO and CFO of London Mining Plc with bribery (June 16, 2023), <https://www.sfo.gov.uk/2023/06/16/serious-fraud-office-charges-former-ceo-and-cfo-of-london-mining-plc-with-bribery>.

Beyond the SFO, other UK enforcement bodies continue to exert their anti-bribery powers. On August 22, 2023, the National Crime Agency (NCA) charged former Nigerian politician Diezani Alison-Madueke, Nigeria's petroleum minister between 2010 and 2015, with accepting bribes in return for awarding oil and gas contracts.⁵⁵⁹

d. FCA Enforcement

The Financial Conduct Authority (FCA) continued its crackdown on firms deemed to have inadequate anti-money laundering systems and controls.

The FCA penalized two banks in January 2023. It imposed a £7.7 million (approximately \$9.8 million) fine on Guaranty Trust Bank (UK) Ltd. for serious weaknesses in its AML systems and controls between 2014 and 2019.⁵⁶⁰ The FCA also fined Al Rayan Bank Plc £4 million (approximately \$5.1 million) for failing to "manage the risk that it might be used to facilitate money-laundering."⁵⁶¹

In October 2023, the FCA fined ADM Investor Services International Ltd. £6.5 million (approximately \$8.3 million) for alleged inadequate AML systems and controls.⁵⁶² None of the three firms disputed the FCA's findings, and each qualified for a 30% discount in their penalties as a result of their agreement to settle.

Notably, the FCA did not need to demonstrate that money laundering had occurred in order to penalize the firms. They were found by the FCA to be in breach of Principle 3, which, as set out in the FCA's handbook, requires firms to "take reasonable care to organise and control [their] affairs responsibly and effectively, with adequate risk management systems." Firms can face sanctions for compliance failures without the UK's Money Laundering Regulations directly being breached.

B. France

1. Policy Developments

In 2023, French enforcement authorities published two pieces of important guidance providing insight into authorities' expectations from internal investigations and the credit that companies may receive when negotiating resolutions. This new guidance further aligns France with the approaches adopted by the UK and U.S. to incentivize self-reporting and cooperation.

⁵⁵⁹ UK National Crime Agency Press Release: Ex-Nigerian politician charged in corruption case (Aug. 22, 2023), <https://www.nationalcrimeagency.gov.uk/news/ex-nigerian-politician-charged-in-corruption-case>.

⁵⁶⁰ UK Financial Conduct Authority Press Release: FCA fines Guaranty Trust Bank (UK) Limited £7.6 million for further failures in its anti-money laundering systems and controls (Jan. 10, 2023), <https://www.fca.org.uk/news/press-releases/fca-fines-guaranty-trust-bank-uk-limited-ps76-million-further-failures-its-anti-money-laundering>. The FCA had previously fined Guaranty Trust Bank £525,000 (approximately \$670,000) in August 2013 for serious and systemic failures in its AML controls.

⁵⁶¹ UK Financial Conduct Authority Press Release: FCA penalises Al Rayan Bank PLC for anti-money laundering failures (Jan. 11, 2023), <https://www.fca.org.uk/news/press-releases/fca-penalises-al-ryan-bank-plc-anti-money-laundering-failures>.

⁵⁶² UK Financial Conduct Authority Press Release: FCA fines ADM Investor Services International Limited £6,470,600 for serious financial crime control failings (Oct. 2, 2023), <https://www.fca.org.uk/news/press-releases/fca-fines-admissi-serious-financial-crime-control>.

On January 16, 2023, the French National Financial Prosecutor's Office (PNF) published updated guidelines on the French-style DPA and NPA, the Convention Judiciaire d'Intérêt Public (CJIP).⁵⁶³ The newly published guidelines supersede the initial guidance issued in 2019. They aim to provide more transparency and predictability regarding the use of these settlements and to encourage companies to self-disclose and cooperate. Of note, the guidelines list 17 factors—nine aggravating⁵⁶⁴ and eight mitigating⁵⁶⁵—associated with a maximum fine increase or reduction. Specifically, companies may obtain a maximum 20% reduction of their fine if they conduct their own internal investigation,⁵⁶⁶ while companies that are actively cooperating with enforcement authorities can get an additional 30% reduction. Although the guidelines provide cooperation credit comparable to the DOJ's, they offer little indication as to what steps companies should concretely undertake to qualify for a full cooperation credit.

On March 14, 2023, the PNF and the French Anti-Corruption Agency (AFA) jointly published a “practical guide” aiming at educating companies on best practices to conduct anti-corruption internal investigations (the Guide).⁵⁶⁷ The Guide synthesizes existing legal requirements and authorities' expectations with respect to opening and conducting anti-corruption internal investigations.⁵⁶⁸ It makes recommendations on the key components of an internal investigation, including the adoption of internal procedures governing the opening and investigative steps of the internal investigation, the collection of employees' data, and the methodology for conducting interviews. Notably, the Guide explains that, under relevant case law, attorney-client communications made during the internal investigation are not protected by the attorney-client privilege unless the investigation is conducted at the direction of enforcement

⁵⁶³ Parquet National Financier, Guidelines on the implementation of the judicial public interest agreement (CJIP) (Jan. 16, 2023), https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-03/Guidelines%20on%20the%20implementation%20of%20the%20CJIP_PNF_January%2016%202023%20VD.pdf

⁵⁶⁴ The aggravating factors include: obstruction of the investigation, large companies, deficiencies in the compliance program, repeat or continuous misconduct, recidivism, use of the company's resources to conceal the alleged misconduct, creation of specific tools to conceal the alleged misconduct, involvement of a public official, and whether the misconduct causes serious trouble to the public order. Parquet National Financier, Guidelines on the implementation of the judicial public interest agreement (CJIP) (Jan. 16, 2023), https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-03/Guidelines%20on%20the%20implementation%20of%20the%20CJIP_PNF_January%2016%202023%20VD.pdf

⁵⁶⁵ The mitigating factors are: voluntary self-disclosure, one-time offenses, robust internal investigations, active cooperation, corrective measures, efficiency of the internal reporting system, non-equivocal admission of the facts, and prior indemnification of the victims. Parquet National Financier, Guidelines on the implementation of the judicial public interest agreement (CJIP) (Jan. 16, 2023), https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-03/Guidelines%20on%20the%20implementation%20of%20the%20CJIP_PNF_January%2016%202023%20VD.pdf

⁵⁶⁶ Under the Sapin II Law, the French anti-corruption statute, the CJIP fine must be proportionate to the benefit derived from the misconduct and can be up to 30% of the company's average annual turnover during the previous three years. The updated guidelines clarify that the PNF may now consider the total turnover of the company group and not only the turnover of the legal entity negotiating the settlement in order to avoid companies concentrating their criminal liability into the entity with the lowest turnover. Parquet National Financier, Guidelines on the implementation of the judicial public interest agreement (CJIP) (Jan. 16, 2023), https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-03/Guidelines%20on%20the%20implementation%20of%20the%20CJIP_PNF_January%2016%202023%20VD.pdf

⁵⁶⁷ Agence Française Anticorruption, Parquet National Financier, Guide Pratique, Les Enquêtes Internes Anticorruption (Mar. 14, 2023), https://www.agence-francaise-anticorruption.gouv.fr/files/2023-03/Guide_Enquetes%20internes_Web.pdf.

⁵⁶⁸ The AFA previously recommended that companies conduct internal investigations when their mandatory compliance programs uncover corruption risks. Agence Française Anticorruption, Recommandations de l'AFA : vers un référentiel anticorruption français (Oct. 16, 2020), <https://www.agence-francaise-anticorruption.gouv.fr/fr/recommandations>.

authorities.⁵⁶⁹ Finally, the Guide reiterates the January 2023 guidance from the PNF relating to the CJIP and adds that late or incomplete self-disclosure to enforcement authorities could be considered as an aggravating factor in negotiating the CJIP fine.

2. Enforcement Trends

In 2023, one of the most notable resolutions of bribery allegations in France involved the UK oil and gas company TechnipFMC. In June 2023, TechnipFMC, and its French subsidiary, Technip Energies, entered into a €208 million (approximately \$230 million) CJIP with French prosecutors to resolve allegations that the companies bribed foreign public officials in Ghana and Equatorial Guinea between 2008 and 2017.⁵⁷⁰ According to the settlement agreement, the PNF started its investigation into the companies in 2018 following a spontaneous transmission of information from a foreign enforcement authority concerning alleged corruption in Brazil.⁵⁷¹ In 2019, TechnipFMC and its U.S. subsidiary agreed to pay over \$300 million to Brazilian and U.S. authorities to resolve allegations of bribery in Brazil and Iraq.⁵⁷²

C. Germany

1. Legislative and Policy Developments

Certain legislative developments in 2023 broadly strengthened Germany's efforts to combat corruption.

In July 2023, the German Whistleblower Protection Act (*Hinweisgeberschutzgesetz – HinSchG*) came into effect.⁵⁷³ The law regulates the protection of whistleblowers⁵⁷⁴ and establishes when and by what standards whistleblowers

⁵⁶⁹ According to French Bar organizations, attorney-client communications are protected also in the context of attorney-led investigations. See e.g., Conseil National des Barreaux (CNB), *Un guide pour accompagner la profession en matière d'enquêtes internes* (July 2, 2020), <https://www.cnb.avocat.fr/fr/actualites/un-guide-pour-accompagner-la-profession-en-matiere-denquetes-internes>.

⁵⁷⁰ Alice Johnson, *French Technip settlement reveals details of African foreign bribery investigation*, GLOBAL INVESTIGATIONS REV., (July 11, 2023), <https://globalinvestigationsreview.com/article/french-technip-settlement-reveals-details-of-african-foreign-bribery-investigation>.

⁵⁷¹ Alice Johnson, *French Technip settlement reveals details of African foreign bribery investigation*, GLOBAL INVESTIGATIONS REV., (July 11, 2023), <https://globalinvestigationsreview.com/article/french-technip-settlement-reveals-details-of-african-foreign-bribery-investigation>.

⁵⁷² Alice Johnson, *French Technip settlement reveals details of African foreign bribery investigation*, GLOBAL INVESTIGATIONS REV., (July 11, 2023), <https://globalinvestigationsreview.com/article/french-technip-settlement-reveals-details-of-african-foreign-bribery-investigation>.

⁵⁷³ Article 10(2), BGBl. 2023 I No. 140, <https://www.gesetze-im-internet.de/hinschg/BJNR08C0B0023.html>.

⁵⁷⁴ Section 1(1), German Whistleblower Protection Act, <https://www.gesetze-im-internet.de/hinschg/BJNR08C0B0023.html>.

shall be protected when reporting or disclosing violations.⁵⁷⁵ The law came into effect approximately a year and a half after the December 17, 2021 deadline⁵⁷⁶ established by the EU Whistleblower Directive.⁵⁷⁷

In addition, in November 2023, the German Federal Parliament introduced a draft bill for proposed changes to the German Lobby Register Act (*Lobbyregistergesetz – LobbyRG*) (the proposed German Lobby Register Act) to the German Federal Assembly.⁵⁷⁸ The German Lobby Register Act was initially implemented to ensure transparency and democratic accountability in order to impede cases of corruption.⁵⁷⁹

Notably, the proposed German Lobby Register Act intends to broaden the scope of the current German Lobby Register Act to cover contacts with ministries down to the level of heads of unit, in addition to employees of bodies, caucuses, members, parliamentary groups, and groups of the German Federal Parliament as well as certain employees of the German Federal Government (*Bundesregierung*).⁵⁸⁰

Further, with these modifications, those who represent interests would have to provide additional information such as information on memberships in connection to lobbying, information on certain involvement in the German Federal Government and the German Federal Parliament in the last five years, and information to present the intended influence.⁵⁸¹

Those proposed changes still have to go through the legislative process before coming into force.

⁵⁷⁵ German Federal Government Parties, *Gesetzentwurf der Fraktionen SPD, BÜNDNIS 90/DIE GRÜNEN und FDP, Entwurf eines Gesetzes für einen besseren Schutz hinweisgebender Personen sowie zur Umsetzung der Richtlinie zum Schutz von Personen, die Verstöße gegen das Unionsrecht melden*, BT-Drs 20/5992 (Mar. 14, 2023), <https://dserver.bundestag.de/btd/20/059/2005992.pdf>, at 2.

⁵⁷⁶ Article 26(1), EU Whistleblower Directive, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>. As a consequence of this delay, in early 2022, the EU Commission opened an infringement proceeding against Germany for failing to meet the implementation deadline for the EU Whistleblower Directive. Heike Anger, *Überfälliges Whistleblower-Gesetz: Deutschland bekommt "blauen Brief" aus Brüssel*, *HANDELSBLATT* (Feb. 10, 2022), <https://www.handelsblatt.com/politik/deutschland/vertragsverletzungsverfahren-ueberfaelliges-whistleblower-gesetz-deutschland-bekommt-blauen-brief-aus-bruessel/28056780.html>.

⁵⁷⁷ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (the "EU Whistleblower Directive"), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>.

⁵⁷⁸ German Federal Parliament, *Gesetzentwurf des Deutschen Bundestages - Gesetz zur Änderung des Lobbyregistergesetzes*, BR-Drs 544/23 (Nov. 3, 2023), https://www.bundesrat.de/SharedDocs/drucksachen/2023/0501-0600/544-23.pdf?__blob=publicationFile&v=2. The German Lobby Register Act came into force on January 1, 2022. See Section 10, German Lobby Registration Act, <https://www.bundestag.de/resource/blob/870452/2f01f6de526b29ea06fb81d9980c8a88/Gesetz-EN-neu-data.pdf>.

⁵⁷⁹ German Federal Government Parties at the time, *Entwurf eines Gesetzes zur Einführung eines Lobbyregisters beim Deutschen Bundestag und zur Änderung des Gesetzes über Ordnungswidrigkeiten (Lobbyregistergesetz)*, BT-Drs. 19/22179, at 7 (Sept. 8, 2020), <https://dip21.bundestag.de/dip21/btd/19/221/1922179.pdf>.

⁵⁸⁰ Section 1(2), German Lobby Register Act, <https://www.bundestag.de/resource/blob/870452/2f01f6de526b29ea06fb81d9980c8a88/Gesetz-EN-neu-data.pdf>.

⁵⁸¹ See Section 3, German Lobby Register Act, <https://www.bundestag.de/resource/blob/870452/2f01f6de526b29ea06fb81d9980c8a88/Gesetz-EN-neu-data.pdf>.

2. Enforcement Developments

In March 2023, the Public Prosecutor's Office (*Staatsanwaltschaft*) in Bochum searched the corporate headquarters of Vonovia, a German housing association. According to public reports, current and former employees of Vonovia allegedly received money or payments in kind for favoring several companies working for Vonovia when awarding contracts, manipulated bills of quantities in order to submit exorbitant invoices, and divided the money amongst themselves. A compliance-risk assessment that Vonovia had conducted in 2021 identified potential for improvement in money laundering prevention and IT security, while other areas were considered to be in a good to very good position.⁵⁸²

Also in March 2023, the Public Prosecutor's Office reportedly assigned the State Office of Criminal Investigations (*Landeskriminalamt – LKA*) to search buildings of car manufacturer Mercedes-Benz in Stuttgart. The investigation relates to allegations that employees of the company engaged in commercial bribery by both paying and accepting bribes in a scheme involving millions of Euros. According to public reports, two employees allegedly awarded orders to specific suppliers and received a reward in return. Mercedes-Benz allegedly suffered damage because of the scheme and subsequently filed a complaint against the employees.⁵⁸³

In May 2023, the Frankfurt Regional Court (*Landgericht*) convicted a former senior public prosecutor and other defendants on 86 counts of taking bribes and sentenced the former prosecutor to six years in prison.⁵⁸⁴ Between 2015 and 2020, the former prosecutor—who led a healthcare corruption investigation unit and served as a spokesperson for the Prosecutor General's Office (*Oberstaatsanwaltschaft*) in Frankfurt—was found to have awarded opinions for the judiciary to a firm he founded together with a school friend. Those opinions accounted for approximately 90% of the firm's revenue. In return, the former prosecutor received approximately €350,000 (approximately \$390,000). The Prosecutor General's Office in Frankfurt has also asserted claims for damages of several million Euros due to the breaches of official duty. Investigations are ongoing against two other public prosecutors who used to work with the convicted former prosecutor.⁵⁸⁵

D. European Union

1. Legislative and Policy Developments

On January 12, 2023, European Parliament President Roberta Metsola proposed a 14-point anti-corruption reform plan that, among other changes, would prevent former Members of the European Parliament (MEPs) from lobbying for two years after they leave office, require public disclosure of meetings between lobbyists and MEPs, and ban

⁵⁸² Jonas Jansen, "Wir haben diesen Menschen vertraut", FRANKFURTER ALLGEMEINE ZEITUNG (Mar. 17, 2023), <https://www.faz.net/aktuell/wirtschaft/unternehmen/vonovia-untersucht-korruptionsvorwurf-nach-durchsuchung-18754794.html>.

⁵⁸³ *Durchsuchung bei Mercedes – Mitarbeiter unter Korruptionsverdacht*, HANDELSBLATT (Mar. 21, 2023), <https://www.handelsblatt.com/unternehmen/industrie/razzia-durchsuchung-bei-mercedes-mitarbeiter-unter-korruptionsverdacht/29050120.html>.

⁵⁸⁴ Frankfurt Regional Court, decision on 12.05.2023, File No. 5/24 KLs 7/22.

⁵⁸⁵ René Bender, *Sechs Jahre Haft für korrupten Oberstaatsanwalt aus Hessen*, HANDELSBLATT (May 12, 2023), <https://www.handelsblatt.com/finanzen/steuern-recht/recht/justizskandal-sechs-jahre-haft-fuer-korrupten-oberstaatsanwalt-aus-hessen/29149748.html>.

“Friendship Groups,” unofficial parliamentary bodies that discuss EU policies with non-member states and are often directly funded by foreign governments.⁵⁸⁶

On February 16, 2023, the European Parliament adopted a resolution on the establishment of an independent EU ethics body. The resolution urged the European Commission, the EU’s executive branch responsible for proposing and enforcing European legislation, to submit by the end of March 2023 a proposal to establish an independent ethics body for the Parliament and the Commission that is open to the participation of all institutions and agencies of the EU.⁵⁸⁷ On June 8, 2023, the European Commission adopted a proposal for an interinstitutional ethics body,⁵⁸⁸ and on July 12, the European Parliament made an additional adoption of a resolution to establish that body.⁵⁸⁹ Currently, the proposal has been implemented by the European Parliament via a 14-point reform plan strengthening integrity, independence, and accountability.⁵⁹⁰

The European Commission and the High Representative for Foreign Affairs jointly submitted a proposed draft anti-corruption directive to the European parliament on May 3, 2023.⁵⁹¹ The Commission and High Representative announced this proposal for increased anti-corruption measures in the EU after EU President Ursula von der Leyen’s State of the Union address on September 14, 2022.

2. Enforcement Trends

In connection with allegations that MEPs accepted bribes in exchange for legislative support for Qatar and Morocco in parliamentary decision-making, in what has been termed “Qatargate,” the Belgian Federal Public Prosecutor’s Office has charged four people—former MEP Pier Antonio Panzeri (Italy), MEP Eva Kaili (Greece), MEP assistant Francesco Giorgi (Italy), and NGO head Niccolo Figa-Talamanca—with bribery, money laundering, and membership

⁵⁸⁶ Lorne Cook, *Top EU lawmakers greenlight anti-corruption reform plans*, ASSOC. PRESS (Jan. 12, 2023), <https://apnews.com/article/politics-belgium-government-european-parliament-europe-scandals-fe18d14173dce3c665588494192f5d24>.

⁵⁸⁷ European Parliament Resolution of February 16, 2023 on the establishment of an independent EU ethics body (2023/2555(RSP)), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0055_EN.html.

⁵⁸⁸ European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Court of Justice, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions - Proposal for an interinstitutional ethics body (June 8, 2023), https://commission.europa.eu/system/files/2023-06/COM_2023_311_1_EN.pdf.

⁵⁸⁹ European Parliament Resolution of 12 July 2023 on the establishment of the EU ethics body (2023/2741(RSP)) (July 12, 2023), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0281_EN.html.

⁵⁹⁰ European Parliament, Implementation of the 14 point Reform plan ‘Strengthening Integrity, Independence and Accountability’ (Sept. 25, 2023), <https://www.europarl.europa.eu/news/files/ep-implementation-progress-of-14-points-reform-25-Sept.pdf>.

⁵⁹¹ European Commission, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council* (May. 3, 2023), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A234%3AFIN>.

in a criminal organization.⁵⁹² On February 2, 2023, the Parliament announced that it had decided to lift the immunity of MEPs Andrea Cozzolino (Italy) and Marc Tarabella (Belgium) in connection with the Belgian investigation.⁵⁹³

E. Switzerland

On December 5, 2023, the Office of the Swiss Attorney General (OAG) filed charges against three individuals and Trafigura Beheer BV, a unit of the commodity trading Trafigura Group, in relation to their alleged involvement in a bribery scheme in Angola.⁵⁹⁴ This case represents the first time the Swiss Federal Criminal Court will rule on the liability of a company for the active bribery of a foreign public official.

Between April 2009 and October 2011, the former Chief Operating Officer (COO) of Trafigura Beheer allegedly authorized the payment of €4,346,176.60 in bank transfers and \$604,000 in cash to the former CEO of Sonangol Distribuidora, a subsidiary of the Angolan state-owned oil company Sonangol SA. According to the indictment, the payments were made with the approval of the former Trafigura COO and routed through an intermediary using an offshore company. In return for the payments, Sonangol Distribuidora allegedly authorized eight ship-chartering contracts and one bunkering contract in favor of Trafigura, which profited by \$143.7 million.

Trafigura Beheer is charged not only with the active bribery of a public official, but also with failing to take all reasonable and necessary organizational measures to prevent the bribery of foreign public officials by not maintaining or implementing internal regulations in accordance with international standards on preventing and combating corruption.

Earlier in the year, the OAG announced on April 27, 2023 that a summary penalty order had been imposed against SICPA SA—a global provider of security inks as well as secured identification, traceability, and authentication solutions—for organizational deficiencies⁵⁹⁵ that failed to prevent acts of corruption⁵⁹⁶ by a former employee.⁵⁹⁷ The company issued a statement acknowledging the order but disagreeing with its grounds.

⁵⁹² Jennifer Rankin, *EU committee votes to lift immunity from two MEPs amid 'Qatargate' inquiry*, THE GUARDIAN (Jan. 31, 2023), <https://www.theguardian.com/world/2023/jan/31/eu-committee-votes-to-lift-immunity-from-two-meps-amid-qatargate-inquiry>.

⁵⁹³ European Parliament Press Release: *Parliament lifts immunity of MEPs Cozzolino and Tarabella* (Feb. 2, 2023), <https://www.europarl.europa.eu/news/en/press-room/20230130IPR70211/parliament-lifts-immunity-of-meps-cozzolino-and-tarabella>.

⁵⁹⁴ Office of the Att'y Gen. of Switzerland Press Release: *TRAFIGURA BEHEER BV and three individuals referred to the Federal Criminal Court* (Dec. 6, 2023), <https://www.bundesanwalt.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-99242.html>.

⁵⁹⁵ A penalty order is an order by the investigating or prosecuting authority to a suspected offender to end criminal proceedings without a judicial decision. Susanne Wenger, *When justice gives short shrift*, HORIZONS: THE SWISS RESEARCH MAGAZINE (May 3, 2020), <https://www.horizons-mag.ch/2020/03/05/penalty-orders-going-straight-to-jail>.

⁵⁹⁶ The Swiss Federal Council Press Release: *SICPA SA convicted of corporate criminal liability in connection with acts of corruption* (Apr. 27, 2023), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-94544.html>.

⁵⁹⁷ The Swiss Federal Council Press Release: *SICPA SA convicted of corporate criminal liability in connection with acts of corruption* (Apr. 27, 2023), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-94544.html>.

On April 4, 2023, the Geneva public prosecutor's office announced that an appeals court had upheld the conviction of Israeli mining magnate Beny Steinmetz related to paying bribes to win a lucrative mining license for his eponymous company, the Beny Steinmetz Group Resources (BSGR). BSGR won the license in 2008 through a deal that also triggered investigations in the U.S., where former BSGR advisor Frederic Cilins pleaded guilty in 2014 to obstructing the DOJ's investigation into BSGR's alleged bribery in Guinea. In a press release, a spokesperson for Steinmetz described the latest judgment against him as "iniquitous" and said that the businessman will take the decision to Switzerland's highest court.⁵⁹⁸

F. Ecuador

In 2023, Ecuador's Attorney General brought notable high-profile anti-corruption cases at the same time as political developments in the country have increased Ecuadorians' concerns about government corruption.

1. Enforcement Trends

On February 22, 2023, Attorney General Diana Salazar filed public corruption-related charges against 37 people, including former President Lenín Moreno.⁵⁹⁹ Attorney General Salazar alleged that a Chinese state-owned company, Sinohydro, paid \$76 million in bribes to public officials between 2009 and 2018 relating to Sinohydro's building of the Coca Codo Sinclair hydroelectric energy plant.⁶⁰⁰ The charges came on the heels of the 2019 leak of the "Ina Papers," which appeared to show that Sinohydro paid bribes to Moreno and others. As part of the investigation, the Attorney General's office issued 10 mutual legal assistance requests to other nations, signaling increased international cooperation in its anti-corruption efforts.⁶⁰¹ The case has repeatedly been delayed at the pretrial phase due to the poor health of some of the defendants, including Lenín Moreno.⁶⁰²

⁵⁹⁸ Sam Fry, *Geneva appeal court upholds Steinmetz bribery conviction*, GLOBAL INVESTIGATIONS REV. (Apr. 4, 2023), <https://globalinvestigationsreview.com/article/geneva-appeal-court-upholds-steinmetz-bribery-conviction>.

⁵⁹⁹ Tanya Wadhwa, *Bribery charges to be filed against former Ecuadorian President Lenín Moreno*, PEOPLES DISPATCH (Feb. 26, 2023), <https://peoplesdispatch.org/2023/02/26/bribery-charges-to-be-filed-against-former-ecuadorian-president-lenin-moreno/>.

⁶⁰⁰ Ana de Liz, *Ecuador to file charges over alleged hydroelectric dam bribery scheme*, GLOBAL INVESTIGATIONS REV. (Feb. 23, 2023), <https://globalinvestigationsreview.com/article/ecuador-file-charges-over-alleged-hydroelectric-dam-bribery-scheme>.

⁶⁰¹ Ana de Liz, *Ecuador to file charges over alleged hydroelectric dam bribery scheme*, GLOBAL INVESTIGATIONS REV. (Feb. 23, 2023), <https://globalinvestigationsreview.com/article/ecuador-file-charges-over-alleged-hydroelectric-dam-bribery-scheme>.

⁶⁰² See, e.g., *Caso Sinohydro: situación médica hace que el expresidente Lenín Moreno y su esposa incumplan nuevamente medida cautelar*, EL UNIVERSO (Oct. 13, 2023), <https://www.eluniverso.com/noticias/politica/caso-sinohydro-presentacion-periodica-tema-medico-audiencia-lenin-moreno-coca-codo-sinclair-corte-nacional-de-justicia-cohecho-diana-salazar-fiscalia-general-del-estado-rafael-correa-nota/>; *Caso Sinohydro: seis pedidos hacen que nuevamente se difiera la audiencia de evaluación y preparatoria de juicio por cohecho contra Lenín Moreno y otros*, EL UNIVERSO (Sept. 14, 2023), <https://www.eluniverso.com/noticias/politica/caso-sinohydro-diferimiento-audiencia-lenin-moreno-coca-codo-sinclair-corte-nacional-de-justicia-cohecho-diana-salazar-fiscalia-general-del-estado-rafael-correa-nota/>.

On May 15, 2023, Attorney General Salazar announced bribery charges against former Minister of Energy and Mines Xavier Vera. The charges stem from Vera's alleged appointment of officials at the state-owned oil company Petroecuador in exchange for bribes.⁶⁰³

2. Political Developments

In May 2023, President Guillermo Lasso dissolved the legislature before it could vote to impeach him on allegations of corruption, including involvement with organized crime, tax evasion, and corrupt dealings with the energy industry.⁶⁰⁴ Lasso's move triggered a law requiring new elections within six months. During the campaign, presidential candidate Fernando Villavicencio, an outspoken opponent of corruption, was assassinated.⁶⁰⁵ In October 2023, Ecuadorians elected Daniel Noboa as President.⁶⁰⁶ Despite Ecuadorians' concerns about corruption, Noboa has yet to publicly commit to anti-corruption efforts.⁶⁰⁷

G. Brazil

On September 6, 2023, Judge José Antonio Dias Toffoli of the Supreme Federal Court (STF) in Brazil concluded that the evidence obtained under the terms of the leniency agreement between Odebrecht, the Brazilian conglomerate now known as Novonor, and Brazil's Federal Prosecution Service (MPF) was inadmissible in the country's courts because, according to Judge Toffoli, Odebrecht's executives were coerced into entering into plea agreements.⁶⁰⁸ In particular, Judge Toffoli referenced the Odebrecht prosecutors' failure to comply with procedures for asset recovery and information-sharing with international counterparts.⁶⁰⁹ This led Judge Toffoli to conclude that all evidence

⁶⁰³ Ana de Liz, *Former Ecuador minister arrested on suspicion of bribery*, GLOBAL INVESTIGATIONS REV. (May 16, 2023), <https://globalinvestigationsreview.com/article/former-ecuador-minister-arrested-suspicion-of-bribery>; *Ecuadorean Former Energy Minister Detained on Alleged Bribery*, TELESUR (May 16, 2023), <https://www.telesurenglish.net/news/Ecuadorean-Former-Energy-Minister-Detained-on-Alleged-Bribery-20230516-0001.html>.

⁶⁰⁴ Ellen Ioanes, *Corruption charges are the latest problem for President Guillermo Lasso, who has failed to curb violence in Ecuador.*, Vox (May 17, 2023), <https://www.vox.com/world-politics/2023/4/30/23705442/ecuador-lasso-political-corruption>.

⁶⁰⁵ Jonny Hallam, et al., *Ecuador presidential candidate Fernando Villavicencio assassinated at campaign event*, CNN (Aug. 10, 2023), <https://www.cnn.com/2023/08/09/americas/ecuador-presidential-candidate-fernando-villavicencio-assassinated-intl-hnk/index.html>.

⁶⁰⁶ See, e.g., *Ecuador Election Highlights Corruption Challenge*, WORLD JUSTICE PROJECT (Sept. 25, 2023), <https://worldjusticeproject.org/news/ecuador-election-highlights-corruption-challenge>.

⁶⁰⁷ Will Freeman, *Ecuador's 2023 Election: What Noboa's Victory Means*, COUNCIL ON FOREIGN RELATIONS (Oct. 19, 2023), <https://www.cfr.org/in-brief/ecuadors-2023-election-what-noboas-victory-means>.

⁶⁰⁸ Ana de Liz, *Brazil Supreme Court Annuls Evidence From Odebrecht Resolution*, GLOBAL INVESTIGATIONS REV. (Sept. 7, 2023), <https://globalinvestigationsreview.com/article/brazil-supreme-court-annuls-evidence-odebrecht-resolution>.

⁶⁰⁹ Ana de Liz, *Brazil Supreme Court Annuls Evidence From Odebrecht Resolution*, GLOBAL INVESTIGATIONS REV. (Sept. 7, 2023), <https://globalinvestigationsreview.com/article/brazil-supreme-court-annuls-evidence-odebrecht-resolution>.

obtained through confessions under the Odebrecht leniency agreements was inadmissible and could not be used “in any scope or degree of jurisdiction.”⁶¹⁰

The Odebrecht case, part of Operation Car Wash or *Lava Jato*, involved conduct that spanned 12 countries and involved almost a billion dollars in payments made from Odebrecht employees to government officials.⁶¹¹ The investigation resulted in charges against many high-level executives and politicians, including President Luiz Inácio Lula da Silva, who spent 18 months in prison for his involvement with Odebrecht before returning as Brazil’s President in January 2023.⁶¹²

H. Canada

1. Legal Developments

In the prosecution of Damodar Arapakota, the former CEO of the Canadian electronics company IMEX, the Ontario Superior Court of Justice determined that the standard for foreign bribery convictions under the Canadian Corruption of Foreign Public Officials Act contained a “quid pro quo” element.⁶¹³ Arapakota was accused of bribing a Botswanan official by paying for his family trip to Orlando in exchange for letters confirming that the Botswanan government had terminated a contract with an IMEX competitor and planned to contract with IMEX.⁶¹⁴ Dismissing the prosecution in January 2023 and publishing its decision that March, the court interpreted the anti-bribery statute as “requir[ing] proof of a link between the advantage given to a public foreign official and a specific act (or omission) undertaken by the public foreign official.”⁶¹⁵ While the court found that Arapakota had conferred a material benefit on the official, there was insufficient evidence to demonstrate that Arapakota had provided the trip *in exchange for* the letters. It was not sufficient that the letters were “generally helpful” to Arapakota and that the official provided them following the Orlando trip.⁶¹⁶ Arapakota’s acquittal was the first under Canada’s anti-bribery law, and an appeal is pending.⁶¹⁷

⁶¹⁰ Ana Paula Candil and Paula Mariane, *Evidence in Odebrecht’s leniency agreement in Operation Car Wash probes annulled by Brazil’s Supreme Court*, MLEX (Sept. 8, 2023), <https://mlexmarketinsight.com/news/insight/evidence-in-odebrecht-s-leniency-agreement-in-operation-car-wash-probes-annulled-by-brazil-s-supreme>.

⁶¹¹ WilmerHale, *Global Anti-Bribery Year-in-Review: 2017 Developments and Predictions for 2018*, at 91 (Jan. 12, 2018), https://www.wilmerhale.com/-/media/files/shared_content/editorial/publications/wh_publications/client_alert_pdfs/2018-01-12-fcpa-alert.pdf.

⁶¹² Ana Paula Candil and Paula Mariane, *Evidence in Odebrecht’s leniency agreement in Operation Car Wash probes annulled by Brazil’s Supreme Court*, MLEX (Sept. 8, 2023), <https://mlexmarketinsight.com/news/insight/evidence-in-odebrecht-s-leniency-agreement-in-operation-car-wash-probes-annulled-by-brazil-s-supreme>.

⁶¹³ Alice Johnson, *Canadian Court Clarifies Threshold for Foreign Bribery Convictions*, GLOBAL INVESTIGATIONS REV. (May 5, 2023), <https://globalinvestigationsreview.com/article/canadian-court-clarifies-threshold-foreign-bribery-convictions>.

⁶¹⁴ Alice Johnson, *Canadian Court Clarifies Threshold for Foreign Bribery Convictions*, GLOBAL INVESTIGATIONS REV. (May 5, 2023), <https://globalinvestigationsreview.com/article/canadian-court-clarifies-threshold-foreign-bribery-convictions>.

⁶¹⁵ R. v. Arapakota, 2023 ONSC 1567 (Can.), <https://canlii.ca/t/jw27r>.

⁶¹⁶ R. v. Arapakota, 2023 ONSC 1567 (Can.), <https://canlii.ca/t/jw27r>.

⁶¹⁷ Alice Johnson, *Canadian Court Clarifies Threshold for Foreign Bribery Convictions*, GLOBAL INVESTIGATIONS REV. (May 5, 2023), <https://globalinvestigationsreview.com/article/canadian-court-clarifies-threshold-foreign-bribery-convictions>.

2. Enforcement Trends

On May 16, 2023, the Superior Court of Quebec announced its approval of a settlement for Ultra Electronic Forensic Technologies to pay C\$10.5 million (approximately \$8 million) and enter a four-year remediation agreement for violating the Canadian Corruption of Foreign Public Officials Act.⁶¹⁸ The company, a Canadian subsidiary of Ultra Electronics, allegedly bribed Filipino officials to secure a ballistic identification system contract with the Filipino National Police.⁶¹⁹ As part of the settlement agreement, the company must also implement anti-bribery programs and engage an external auditor to monitor for compliance.⁶²⁰ Canada first introduced remediation agreements in 2018, and this is only the second to be announced.⁶²¹ Prosecutors separately charged four individuals affiliated with the company, and those cases are ongoing.⁶²²

I. South Africa

On April 7, 2023, a court in the United Arab Emirates denied South Africa's request to extradite Atul and Rajesh Gupta.⁶²³ South African prosecutors accused the Guptas of participating in widespread misappropriation of state funds through their ties with former South African President Jacob Zuma,⁶²⁴ who resigned in 2018 after multiple corruption scandals.⁶²⁵ The UAE claimed that South Africa's extradition request failed to meet the agreed-upon standards of the countries' 2021 extradition agreement and that South Africa could resubmit its request or appeal the

⁶¹⁸ Ana De Liz, *Ultra Electronics Subsidiary to Pay \$7.8 million in Canadian Foreign Bribery Case*, GLOBAL INVESTIGATIONS REV. (May 18, 2023), <https://globalinvestigationsreview.com/article/ultra-electronics-subsidiary-pay-78-million-in-canadian-foreign-bribery-case>.

⁶¹⁹ Ana De Liz, *Ultra Electronics Subsidiary to Pay \$7.8 million in Canadian Foreign Bribery Case*, GLOBAL INVESTIGATIONS REV. (May 18, 2023), <https://globalinvestigationsreview.com/article/ultra-electronics-subsidiary-pay-78-million-in-canadian-foreign-bribery-case>.

⁶²⁰ Darryl Greer, *Quebec Forensics Firm to Pay \$10M to Avoid Charges over Bribes Promised to Philippine Officials*, GLOBAL NEWS CANADA (May 31, 2013), <https://globalnews.ca/news/9735125/quebec-firm-corruption-philippines>.

⁶²¹ In 2019, Canadian prosecutors entered their first remediation agreement with SNC-Lavalin for bribes the construction company paid to Libyan officials between 2001 and 2011. Allison Lampert & Kelsey Johnson, *Canada's SNC-Lavalin Settles Libya Bribery Case that Shook Trudeau Government*, REUTERS (Dec. 18, 2019), <https://www.reuters.com/article/snc-lavalin-court/update-3-canadas-snc-lavalin-settles-libya-bribery-case-that-shook-trudeau-government-idUSL1N28S18S>. Remediation agreements are the Canadian equivalent to the DOJ's deferred prosecution agreements. Ana De Liz, *Ultra Electronics Subsidiary to Pay \$7.8 million in Canadian Foreign Bribery Case*, GLOBAL INVESTIGATIONS REV. (May 18, 2023), <https://globalinvestigationsreview.com/article/ultra-electronics-subsidiary-pay-78-million-in-canadian-foreign-bribery-case>. Notably, in approving the agreement, the court refused to disturb the settlement's agreed-upon statement of facts and rejected a motion by a Filipino businessman to remove his name from the facts section based on alleged inaccuracies. The man claimed he had been falsely labeled as a participant in the bribery scheme but, in fact, had been a whistleblower. Judge Marc David wrote, "When presented with a remediation agreement, a court must accept the facts as exposed by the prosecutor and the accused organization." Darryl Greer, *No Way of 'Adjudicating Facts' in Deals Between Corrupt Firms and Prosecutors: Quebec Judge*, GLOBAL NEWS CANADA (July 10, 2023), <https://globalnews.ca/news/9821194/quebec-company-corruption-court>.

⁶²² Ana De Liz, *Ultra Electronics Subsidiary to Pay \$7.8 million in Canadian Foreign Bribery Case*, GLOBAL INVESTIGATIONS REV. (May 18, 2023), <https://globalinvestigationsreview.com/article/ultra-electronics-subsidiary-pay-78-million-in-canadian-foreign-bribery-case>.

⁶²³ *South Africa's Gupta Extradition Bid from UAE Fails*, BBC (Apr. 7, 2023), <https://www.bbc.com/news/world-africa-65212130>.

⁶²⁴ *South Africa's Gupta Extradition Bid from UAE Fails*, BBC (Apr. 7, 2023), <https://www.bbc.com/news/world-africa-65212130>.

⁶²⁵ *South Africa's Jacob Zuma Resigns After Pressure from Party*, BBC (Feb. 28, 2018), <https://www.bbc.com/news/world-africa-43066443>.

denial.⁶²⁶ In November 2023, South African Justice Minister Ronald Lamola remarked to the South African Parliament that he had not received any further response to the extradition request from the UAE despite “several meetings and repeated attempts.”⁶²⁷

On April 21, 2023, the South African National Prosecuting Authority (SANPA) secured an asset forfeiture order totaling R5.84 million (approximately \$312,000) from former employees of the Swiss robotics contractor Asea Brown Boveri (ABB) stemming from a bribery scheme between 2013 and 2017 involving state power company Eskom.⁶²⁸ The forfeiture order follows ABB’s \$327 million settlement with authorities in South Africa, the United States, and Switzerland in December 2022 as part of the same scheme.⁶²⁹ The Eskom settlement marked the first corporate financial resolution for criminal charges in South Africa’s history.⁶³⁰

J. India

1. Legal Developments

On June 26, 2023, India’s National Financial Reporting Authority issued new guidance for accountants and auditors under the Companies Act, 2013 and the Rules and Standards on Auditing.⁶³¹ The guidance now requires auditors to report any fraud above ₹10 million (approximately \$120,000) that they believe is being committed by or upon a company, regardless of whether the auditor was the first to flag or discover the fraud or whether the fraud was isolated or widespread.⁶³²

India’s Ministry of Finance has also broadened the scope of the Prevention of Money Laundering Act, one of the country’s key anti-corruption laws. In early 2023, the Ministry announced major changes to its interpretation of the law and its enforcement priorities, including (1) bringing cryptocurrencies and other blockchain-based assets within the

⁶²⁶ *South Africa’s Gupta Extradition Bid from UAE Fails*, BBC (Apr. 7, 2023), <https://www.bbc.com/news/world-africa-65212130>.

⁶²⁷ Amanda Khoza, UAE ‘unresponsive’ to Pretoria’s efforts to extradite Gupta brothers, TIMESLIVE (Nov. 8, 2023), <https://www.timeslive.co.za/politics/2023-11-08-parliament-hears-how-uae-continues-to-blue-tick-pretoria-over-extradition-of-guptas/>.

⁶²⁸ *Asset Forfeiture Unit Granted R583 Million Restraint Order*, SA NEWS (Apr. 21, 2023), <https://www.sanews.gov.za/south-africa/asset-forfeiture-unit-granted-r583-million-restraint-order>.

⁶²⁹ *Asset Forfeiture Unit Granted R583 Million Restraint Order*, SA NEWS (Apr. 21, 2023), <https://www.sanews.gov.za/south-africa/asset-forfeiture-unit-granted-r583-million-restraint-order>; see also WilmerHale, *Global Anti-Bribery Year-in-Review: 2022 Developments and Predictions for 2023*, at 43-45 (Feb. 10, 2023), <https://www.wilmerhale.com/insights/client-alerts/20230209-global-anti-bribery-year-in-review-2022-developments-and-predictions-for-2023>.

⁶³⁰ Alice Johnson, *South Africa Refuses to Produce ABB Bribery Settlement Documents*, GLOBAL INVESTIGATIONS REV. (Sept. 29, 2023), <https://globalinvestigationsreview.com/article/south-africa-refuses-produce-abb-bribery-settlement-documents>.

⁶³¹ Government of India, National Financial Reporting Authority, Circular to Auditors of the Entities Regulated by the National Financial Reporting Authority (NFRA) re Statutory Auditors’ Responsibilities in relation to Fraud in a Company (June 26, 2023), <https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2023/06/2023062612.pdf>.

⁶³² Government of India, National Financial Reporting Authority, Circular to Auditors of the Entities Regulated by the National Financial Reporting Authority (NFRA) re Statutory Auditors’ Responsibilities in relation to Fraud in a Company (June 26, 2023), <https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2023/06/2023062612.pdf>.

PMLA's ambit; (2) imposing the PMLA's due diligence, record maintenance, and identity verification requirements on a wider range of individuals than before, including corporate secretaries and chartered accountants; (3) considering a wider range of activities as triggering the PMLA's requirements, including acting as the agent for the formation of an LLC; and (4) amending rules requiring financial institutions to make disclosures of individuals with controlling interests in the institutions, lowering the reporting threshold from 25% ownership to 10%.⁶³³

2. Enforcement Trends

In May 2023, India's main anti-corruption agency, the Central Bureau of Investigation, filed a graft case against BAE Systems plc and Rolls-Royce Holdings following an investigation that began in 2016.⁶³⁴ The complaint alleges a criminal conspiracy between 2003 and 2012 involving the use of intermediaries to bribe government officials to obtain contracts for the manufacture of BAE fighter jets using Rolls-Royce engines.⁶³⁵ The case involves the same claims that resulted in a 2017 deferred prosecution agreement between Rolls-Royce and the UK SFO, although India's case focuses on India-specific conduct while the SFO's case dealt with corruption in several additional countries.⁶³⁶

K. China

The Chinese government in 2023 continued its recent expansion of anti-corruption enforcement actions. Since Chinese President Xi Jinping first took power in 2012, he vowed to root out graft and corruption of both "tigers and flies," or officials across all levels of the party hierarchy,⁶³⁷ embarking on a decade-long anti-corruption drive seen to have the dual purpose of eliminating endemic graft as well as taking down political rivals.⁶³⁸

According to the Central Commission for Discipline Inspection (CCDI), in the first nine months of 2023, the CCDI took action against more than 405,000 officials for corruption-related offenses, including 42 senior officials at provincial or ministerial levels, breaking a record set in 2014. The CCDI investigated 36,000 corruption cases in the first half of 2023, including 12,000 bribery cases, and charged more than 1,600 individuals for corruption-related crimes.⁶³⁹

⁶³³ Pramond Thomas, *Banknote printer De La Rue refutes corruption allegations in India*, *EASTERNEYE* (Jan. 24, 2023), <https://www.easterneye.biz/banknote-printer-de-la-rue-refutes-corruption-allegations-in-india>.

⁶³⁴ *India files graft case against BAE Systems, Rolls-Royce*, *AL JAZEERA* (May 29, 2023), <https://www.aljazeera.com/economy/2023/5/29/india-files-graft-case-against-bae-systems-rolls-royce>.

⁶³⁵ *India files graft case against BAE Systems, Rolls-Royce*, *AL JAZEERA* (May 29, 2023), <https://www.aljazeera.com/economy/2023/5/29/india-files-graft-case-against-bae-systems-rolls-royce>; Alice Johnson, *Rolls-Royce and BAE Systems face criminal complaint in India*, *GLOBAL INVESTIGATIONS REV.* (May 30, 2023), <https://globalinvestigationsreview.com/article/rolls-royce-and-bae-systems-face-criminal-complaint-in-india>.

⁶³⁶ *India files graft case against BAE Systems, Rolls-Royce*, *AL JAZEERA* (May 29, 2023), <https://www.aljazeera.com/economy/2023/5/29/india-files-graft-case-against-bae-systems-rolls-royce>.

⁶³⁷ Xi Jinping, *Historical Wisdom Helps Us Combat Corruption and Uphold Integrity*, *QUISHI* (Apr. 19, 2013), http://en.qstheory.cn/2021-03/12/c_607649.htm.

⁶³⁸ Edward White, *'Keep the blade clean': Xi Jinping's corruption investigators turn focus on themselves*, *FIN. TIMES* (July 6, 2023), <https://www.ft.com/content/2bdcb7ff-facb-43f2-aa75-f0fba1ec0759>.

⁶³⁹ *405,000 officials at all levels punished from January to September: CCDI*, *GLOBAL TIMES* (Oct. 29, 2023), <https://www.globaltimes.cn/page/202310/1300763.shtml>; Amy Hawkins, *China renews crackdown on corruption in healthcare*, *GUARDIAN* (Aug. 17, 2023), <https://www.theguardian.com/world/2023/aug/17/china-renews-crackdown-on-corruption-in-healthcare>.

In 2023, the CCDI launched several industry-specific campaigns to root out corruption. Individual investigations include allegations that a senior official at China Development Bank accepted CN¥5 million (approximately \$700,000) in bribes,⁶⁴⁰ the arrest of several individuals in connection with an investigation into corruption at the Chinese Football Association (CFA),⁶⁴¹ an investigation into healthcare officials accused of using their position to procure kickbacks from pharmaceutical and medical equipment companies,⁶⁴² and investigations into corruption in relation to the procurement of military equipment.⁶⁴³

L. Australia

In June 2023, a series of amendments to the Criminal Code Act 1995 were proposed to address the low volume of foreign bribery convictions; there had been only seven individual and three corporate convictions since the introduction of the offense in 1999.⁶⁴⁴ The bill would also add a corporate offense of failing to prevent foreign bribery. If these amendments pass, a corporation would be guilty of an offense if an “associate”⁶⁴⁵ commits bribery for the profit or gain of the corporation and if the corporation is unable to demonstrate it had adequate procedures in place to prevent bribery by its associates.

The introduction of the proposed amendments follows the lapse in July 2022 of the Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019,⁶⁴⁶ which included the two provisions described above. A key difference between the 2019 proposal and the newly proposed Combating Foreign Bribery Bill is that the latter does not include an amendment to implement a process for DPAs through which the Commonwealth Director of Public Prosecutions

⁶⁴⁰ Zhang Yuzhe and Denise Jia, *Ex-China Development Bank executive investigated for graft*, NIKKEI ASIA (May 22, 2023), <https://asia.nikkei.com/Spotlight/Caixin/Ex-China-Development-Bank-executive-investigated-for-graft>.

⁶⁴¹ *Former China men's soccer team coach charged with bribery, state media report*, REUTERS (Aug. 2, 2023), <https://www.reuters.com/sports/soccer/former-china-mens-soccer-team-coach-charged-with-bribery-state-media-2023-08-02>.

⁶⁴² Yanzhong Huang, *Anti-Corruption Campaign in China's Medical Sector: Unmasking the Hidden Agenda*, COUNCIL ON FOREIGN RELATIONS (Aug. 18, 2023), <https://www.cfr.org/blog/anti-corruption-campaign-chinas-medical-sector-unmasking-hidden-agenda>; Sun Yu, Edward White, Eleanor Olcott, *China's corruption crackdown rips through healthcare sector*, FIN. TIMES (Aug. 29, 2023), <https://www.ft.com/content/149949f0-ef7a-475d-9a1c-e44104d7a0e4>; Chun Han Wong, *In China, a Completely Different Approach to Lowering Healthcare Costs*, WALL ST. J. (Sept. 13, 2023), <https://www.wsj.com/world/china/in-china-a-completely-different-approach-to-lowering-healthcare-costs-f5a8ebba>; *China's government launches a campaign against medical corruption*, ECONOMIST (Sept. 14, 2023), <https://www.economist.com/china/2023/09/14/chinas-government-launches-a-campaign-against-medical-corruption>.

⁶⁴³ *Exclusive: Chinese defense minister under investigation for corrupt procurement*, REUTERS (Sept. 16, 2023), <https://www.reuters.com/world/china/us-diplomat-questions-whether-chinese-defence-minister-under-house-arrest-2023-09-15>.

⁶⁴⁴ Crimes Legislation Amendment (Combating Foreign Bribery) Bill 2023, https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r7055. As of January 2024, the bill, known as the Crimes Legislations Amendment (Combating Foreign Bribery) Bill 2023, was before the Senate.

⁶⁴⁵ A person is an “associate” if they are an officer, employee, agent, contractor or subsidiary of the corporation, or if they are controlled by or perform services for or on behalf of the corporation. Crimes Legislation Amendment (Combating Foreign Bribery) Bill 2023, https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r7055.

⁶⁴⁶ Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1246.

would have been able to invite a person that has engaged in serious corporate crime to negotiate an agreement to comply with a range of specified conditions.⁶⁴⁷

In his speech introducing the Combatting Foreign Bribery Bill to Parliament, Attorney General Mark Dreyfus explained the omission of a DPA proposal by saying it would be premature to introduce a DPA scheme before observing the effect of the amendments on the behavior of corporate entities.

M. International Organizations

1. World Bank

In 2023, the World Bank Group's Integrity Vice Presidency (INT) continued to maintain "its commitment and vigilance against corruption" in World Bank-funded projects.⁶⁴⁸ According to its Sanctions System Annual Report for Fiscal Year 2023 (2023 Report), the INT received 4,646 complaint submissions, a notable increase from the 3,380 submissions in the prior year.⁶⁴⁹ The INT opened 292 preliminary external investigations⁶⁵⁰ and 64 external investigations and closed 44 existing external investigations.⁶⁵¹ From these investigations, the INT submitted 13 sanctions cases and five settlements to the World Bank's Office of Suspension and Debarment (OSD).⁶⁵²

In 2023, the OSD reviewed 12 sanction cases and five settlements (some of which were submitted in the previous fiscal year).⁶⁵³ Of these matters, 10 involved fraud allegations, and five involved corruption allegations (with some

⁶⁴⁷ Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1246.

⁶⁴⁸ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at iv (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>.

⁶⁴⁹ The World Bank's fiscal year runs from July 1, 2022 through June 30, 2023. World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 2 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>; World Bank Group, *Sanctions System Annual Report for Fiscal Year 2022*, at 2 (2022), <https://documents1.worldbank.org/curated/en/099015010072236926/pdf/BOSIB0e55589950540afa70abefa9afb38a.pdf>.

⁶⁵⁰ An initial fact-finding step to determine whether there is sufficient credible evidence and supporting information to warrant an investigation. World Bank Group, *Guide to the Staff Rule 8.01: Investigative Progress* (Aug. 2016), <https://thedocs.worldbank.org/en/doc/206451544726861592-0240022018/original/INTGuidetotheStaffRule801InvestigativeProcessAugust2016.pdf>.

⁶⁵¹ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 2 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>. Despite the uptick in complaint submissions this year, the INT's number of preliminary external investigations and external investigations remained comparable to those for fiscal year 2022 (330 external preliminary investigations and 48 external investigations). World Bank Group, *Sanctions System Annual Report for Fiscal Year 2022*, at 2 (2022), <https://documents1.worldbank.org/curated/en/099015010072236926/pdf/BOSIB0e55589950540afa70abefa9afb38a.pdf>.

⁶⁵² World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 2 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>. The OSD carries out a first-tier review of all sanction cases.

⁶⁵³ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 2 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>.

cases involving both fraud and corruption and/or other sanctionable practices).⁶⁵⁴ The OSD ultimately sanctioned 19 respondents, including 11 companies and eight individuals.⁶⁵⁵ The 2023 Report indicates that, between fiscal year 2019 and fiscal year 2023, approximately 40% of respondents sanctioned were from the East Asia & Pacific Region, with 20% from the Europe & Central Asia Region and another 20% from the Sub-Saharan Africa Region.⁶⁵⁶

In addition to its sanctions work, the INT held its 2023 International Corruption Hunters Alliance Forum in Abidjan, Cote d'Ivoire, which marked the first time the event has been held in an African country.⁶⁵⁷ The INT also facilitated the World Bank's collaboration with six peer multilateral development banks (MDBs) to adopt the "MDB General Principles for Business Integrity Programmes."⁶⁵⁸ These Principles provide non-binding guidance to companies receiving MDB-financing to assist in shaping their integrity and sanctions programs.⁶⁵⁹

2. The Organisation for Economic Co-operation and Development (OECD)

In 2023, the OECD's Working Group on Bribery (WGB) installed Daniëlle Goudriaan as its new chair. Goudriaan serves as the Dutch prosecutor at the European Public Prosecutor's Office and was previously the lead corruption prosecutor in the Netherlands.⁶⁶⁰ In a message as incoming chair, she observed that anti-bribery enforcement remains low among member-nations, citing the fact that only "[e]ighteen of 44 Members of the [WGB] have yet to conclude a foreign bribery case" and that many members have failed to implement reforms recommended by the WGB review process.⁶⁶¹ She also expressed a commitment to gathering and sharing more data on the impact of the OECD's anti-bribery work.⁶⁶²

⁶⁵⁴ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 31 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>.

⁶⁵⁵ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 2 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>.

⁶⁵⁶ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 32 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>.

⁶⁵⁷ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 22-23 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>.

⁶⁵⁸ World Bank Group, *Sanctions System Annual Report for Fiscal Year 2023*, at 22-23 (2023), <https://documents1.worldbank.org/curated/en/099092923070015199/pdf/BOSIB094efb0ea09a093ae053b0969c7d7e.pdf>.

⁶⁵⁹ African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank Group, the International Monetary Fund, the Inter-American Development Bank Group, and the World Bank, *MDB General Principles for Business Integrity Programs* (2023), <https://thedocs.worldbank.org/en/doc/528f96bfd7a3991fba23747e20ed6dc0-0530012023/original/MDB-General-Principles-for-Business-Integrity-Programmes.pdf>.

⁶⁶⁰ OECD Press Release: Statement of OECD Working Group on Bribery Electing New Chair (Mar. 16, 2022), <https://www.oecd.org/corruption/statement-of-oecd-working-group-on-bribery-electing-new-chair.htm>.

⁶⁶¹ OECD Working Group on Bribery in International Business Transactions, *2022 Annual Report*, at 4 (2022), <https://www.oecd.org/daf/anti-bribery/oecd-working-group-on-bribery-2022-annual-report.pdf>.

⁶⁶² OECD Working Group on Bribery in International Business Transactions, *2022 Annual Report*, at 4 (2022), <https://www.oecd.org/daf/anti-bribery/oecd-working-group-on-bribery-2022-annual-report.pdf>.

The WGB has continued its monitoring work, adopting Phase 4 reports on the implementation of the OECD Anti-Bribery Convention in Brazil, Canada, and Denmark.⁶⁶³ In all three reports, the WGB expressed concern about the relatively small number of foreign bribery prosecutions in each country.⁶⁶⁴ The Brazil report also raised alarms about the insufficient protection for whistleblowers and the lack of prosecutorial independence in pursuing corruption charges.⁶⁶⁵ The Denmark report, meanwhile, was critical of the country's lack of a "comprehensive national strategy" to combat foreign bribery.⁶⁶⁶

VII. CONCLUSION

In 2024, we expect anti-corruption enforcement to remain a high priority for US enforcement agencies. We also expect DOJ to continue to look for opportunities to highlight examples in which companies resolving FCPA matters benefited from DOJ's recent policy incentives on voluntary disclosure, cooperation, compensation clawbacks, and M&A safe harbors.

Additionally, now that President Biden has signed FEPA into law, the DOJ will have an expanded ability to prosecute foreign officials, which could have some corollary effects on U.S. issuers and other FCPA-covered companies in terms of additional investigation exposure.

The DOJ's focus on cross-border cooperation, the success of existing collaborations, ongoing sanctions against the Russian Federation and others, and the EU's consideration of new potential members (for which anti-corruption efforts are a factor) should continue to be a boon for coordination amongst global enforcement authorities in 2024. Expect to see further collaborations in Latin America and Asia as well.

2023 also saw the first, but likely not the last, appearance of cryptocurrency in an FCPA indictment. As law enforcement grows more sophisticated regarding emerging technology used to evade sanctions and detection of wrongdoing, and as alternative currencies grow in acceptance, so too should prosecutions that feature payments made through such mediums.

⁶⁶³ The WGB maintains a four-stage peer-review monitoring system to ensure member countries' compliance with the OECD Anti-Bribery Convention. OECD, *Country Monitoring of the OECD Anti-Bribery Convention*, <https://www.oecd.org/daf/anti-bribery/countrymonitoringoftheoecdanti-briberyconvention.htm>.

⁶⁶⁴ OECD Working Group on Bribery in International Business Transactions, *Implementing the OECD Anti-Bribery Convention in Brazil: Phase 4 Report*, at 3 (2023), <https://www.oecd.org/daf/anti-bribery/brazil-phase-4-report.pdf>; OECD Working Group on Bribery in International Business Transactions, *Implementing the OECD Anti-Bribery Convention in Canada: Phase 4 Report*, at 5 (2023), <https://www.oecd.org/daf/anti-bribery/canada-phase-4-report.pdf>; OECD Working Group on Bribery in International Business Transactions, *Implementing the OECD Anti-Bribery Convention in Denmark: Phase 4 Report*, at 4 (2023), <https://www.oecd.org/daf/anti-bribery/denmark-phase-4-report.pdf>.

⁶⁶⁵ OECD Working Group on Bribery in International Business Transactions, *Implementing the OECD Anti-Bribery Convention in Brazil: Phase 4 Report*, at 3 (2023), <https://www.oecd.org/daf/anti-bribery/brazil-phase-4-report.pdf>.

⁶⁶⁶ OECD Working Group on Bribery in International Business Transactions, *Implementing the OECD Anti-Bribery Convention in Denmark: Phase 4 Report*, at 11 (2023), <https://www.oecd.org/daf/anti-bribery/denmark-phase-4-report.pdf>.

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