

# FCPA Update

A Global Anti-Corruption Newsletter



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## The Year 2023 in Review: Steady Enforcement as Laws and Policies Proliferate

In this first issue of 2024, we survey the past year's most significant anti-corruption enforcement activity, legislative and policy changes, and other developments around the world.

### United States

2023 saw the continuation of more typical anti-corruption enforcement levels. This followed the last year's upward trend after 2021's all-time low, at least in the modern era of FCPA enforcement.

U.S. authorities resolved FCPA cases involving 15 companies, imposing approximately \$777 million in monetary sanctions. Compared to the prior year, there were more cases (15 versus 10), but less than half the monetary sanctions

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## United States

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imposed and only two resolutions above \$200 million. In a year in which Congress criticized DOJ for the lack of corporate enforcement,<sup>1</sup> one of the larger resolutions came from an additional \$206 million penalty in connection with Ericsson's breach of its 2019 deferred prosecution agreement. But FCPA enforcement is already off to a quick start in 2024,<sup>2</sup> which, as an election year, may feature more resolutions.<sup>3</sup>

In 2023, DOJ continued its practice of issuing key policy updates, including ever-increasing expectations for compliance programs and for self-disclosure of wrongdoing. These included updates to DOJ's Corporate Enforcement and Voluntary Self-Disclosure Policy ("CEP") and its Evaluation of Corporate Compliance Programs guidelines ("ECCP"), and the announcement of a Pilot Program Regarding Compensation Incentives and Clawbacks ("Compensation Clawback pilot program") and a Mergers & Acquisitions Safe Harbor policy ("M&A Safe Harbor policy").<sup>4</sup>

We share below a few key takeaways from this past year's FCPA enforcement and related legal and policy developments:

- **A new anti-corruption law underscores that combatting corruption remains a top enforcement priority.** As we've previously noted, the Biden Administration has made fighting corruption a national security priority.<sup>5</sup> In December 2023, Congress passed the most significant foreign corruption law since the FCPA, targeting the demand side of foreign bribery. The new law, called the **Foreign Extortion Prevention Act ("FEPA")**, was passed as part of the FY2024 NDAA and criminalizes the demand side of bribery that the

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1. U.S. Senate Committee on the Judiciary, "Cleaning Up the C-Suite: Ensuring Accountability for Corporate Criminals" (Dec. 12, 2023), <https://www.judiciary.senate.gov/committee-activity/hearings/cleaning-up-the-c-suite-ensuring-accountability-for-corporate-criminals> (criticizing DOJ for the lack of corporate enforcement and for resolving cases through DPAs and NPAs rather than guilty pleas, which critics characterized as too lenient or lacking transparency).
  2. On January 10, SAP agreed to pay more than \$220 million to resolve bribery investigations with DOJ, the SEC, and South African authorities related to bribes to secure business with state-owned entities in seven countries. See, e.g., U.S. Dep't of Justice Press Release No. 24-33, "SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations" (Jan. 10, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>; U.S. Sec. & Exch. Comm'n 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. DOJ and the SEC typically close more cases in presidential election years as they try to finalize cases in anticipation of a possible change in personnel and administration. See, e.g., Anna Bianca Roach, "Records show decline in new FCPA cases at SEC continues," *Global Investigations Review* (Nov. 15, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/records-show-decline-in-new-fcpa-cases-sec-continues#:~:text=Lawyers%20say%20the%20continued%20downturn,on%20self%2Ddisclosure%20and%20sanctions>.
  4. See Kara Brockmeyer et al., "DOJ Offers New Incentives in Revised Corporate Enforcement Policy," *Debevoise Update* (Jan. 24, 2023), <https://www.debevoise.com/insights/publications/2023/01/doj-offers-new-incentives-in-revised> ["Jan. 2023 Debevoise Update"]; Kara Brockmeyer et al., "DOJ Issues Trio of Updates That Further Heighten Compliance Expectations," *FCPA Update*, Vol. 14, No.8 (Mar. 2023), <https://www.debevoise.com/insights/publications/2023/03/fcpa-update-march-2023> ["Mar. 2023 FCPA Update"]; Kara Brockmeyer et al., "DOJ Announces Six-Month 'Safe Harbor' Policy for Acquisition-Related Disclosures," *Debevoise Update* (Oct. 6, 2023), <https://www.debevoise.com/insights/publications/2023/10/doj-announces-six-month-safe-harbor-policy> ["Oct. 2023 Debevoise Update"].
  5. See e.g., *Debevoise Update*, "President Biden Declares the Fight Against Corruption a National Security Priority and Directs Federal Agencies To Enhance Enforcement" (June 7, 2021), <https://www.debevoise.com/insights/publications/2021/06/president-biden-declares-the-fight>.

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FCPA does not itself reach. The new law makes it a crime punishable by up to 15 years for foreign officials to request or accept bribes from U.S. companies or persons, or within U.S. territory. Previously, DOJ had to rely on money laundering or other charges to hold accountable the foreign officials who accepted the bribes. FEPA puts a new, potentially powerful, tool in DOJ's toolkit, which can be used to address situations where money laundering or similar charges may be unavailable given the relevant facts.<sup>6</sup>

“In December 2023, Congress passed the most significant foreign corruption law since the FCPA, targeting the demand side of foreign bribery.”

- **FinCEN Beneficial Ownership database adds potentially significant investigative tool.** FinCEN's new rule regarding access to a corporate database that can be used to identify beneficial ownership and increase accountability, particularly for shell companies, became effective in January 2024.<sup>7</sup> Particularly when combined with FEPA, this could have a meaningful impact on DOJ's ability to prosecute foreign officials for corruption violations.
- **The Supreme Court could end administrative proceedings for some SEC actions.** A decision is expected before July 2024 in an ongoing case involving a hedge-fund founder (George R. Jarkesy, Jr.), who is arguing in part that SEC administrative proceedings violate the constitutional right to a jury trial. This decision could have far-reaching effects on the SEC's ability to use its administrative cease-and-desist proceedings to resolve cases against FCPA defendants, as it again did in all nine of its FCPA actions this year.

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6. See Kara Brockmeyer et al., “Congress Passes Foreign Extortion Prevention Act, Targeting ‘Demand Side’ of Foreign Bribery” Debevoise Debrief (Dec. 15, 2023), <https://www.debevoise.com/insights/publications/2023/12/congress-passes-foreign-extortion-prevention-act> [“Dec. 2023 Debevoise Debrief”].

7. Satish M. Kini, Aseel M. Rabie, Isabel Espinosa de los Reyes and Yair Strachman, “FinCEN's Beneficial Ownership Reporting Rule Takes Effect January 1, 2024: Recap and Recent Developments,” Debevoise Update (Dec. 1, 2023), <https://www.debevoise.com/insights/publications/2023/12/fincens-beneficial-ownership-reporting-rule> [“Dec. 2023 Debevoise Update”].

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- **Dip in total penalties due in part to the effect of DOJ's new discount policies at work.** In January 2023, DOJ revised its CEP to increase potential discounts for self-disclosure, cooperation, and remediation to 50%-75% off the low end of the applicable sentencing range (up from a 50% cap)—and up to a 50% discount for companies that fully cooperate and remediate but do not self-disclose (doubling the previous 25% cap). At least two of DOJ's eight 2023 resolutions involved companies receiving discounts larger than they previously would have: Albemarle received a 45% discount and Corficolombiana received a 30% discount (above the previous 25% cap), even though they did not receive credit for voluntary disclosure, saving the companies about \$38 million collectively. DOJ also announced in March its Compensation Clawback pilot program that authorizes fine reductions for companies by the amount by which they reduce or recoup compensation from culpable employees. Resolutions with Albemarle and SAP have involved such reductions. Further, two resolutions in 2023 (H.W. Wood and Corsa Coal) involved inability-to-pay analyses through which DOJ forewent more than \$55 million in additional penalties.
- **2023 cases continue the trend of reflecting a broad reach across geography and industries—and expanding coordination with non-U.S. counterparts.** The 2023 cases involved underlying misconduct in at least 14 jurisdictions and a broad array of sectors, including mining, oil and gas, gaming and sports betting, medical devices, telecommunications, technology, financial services, and insurance. U.S. authorities also thanked enforcement counterparts in 20 different jurisdictions, including new partners like Colombia, for their assistance in connection with the investigations.

## I. Corporate Enforcement Trends

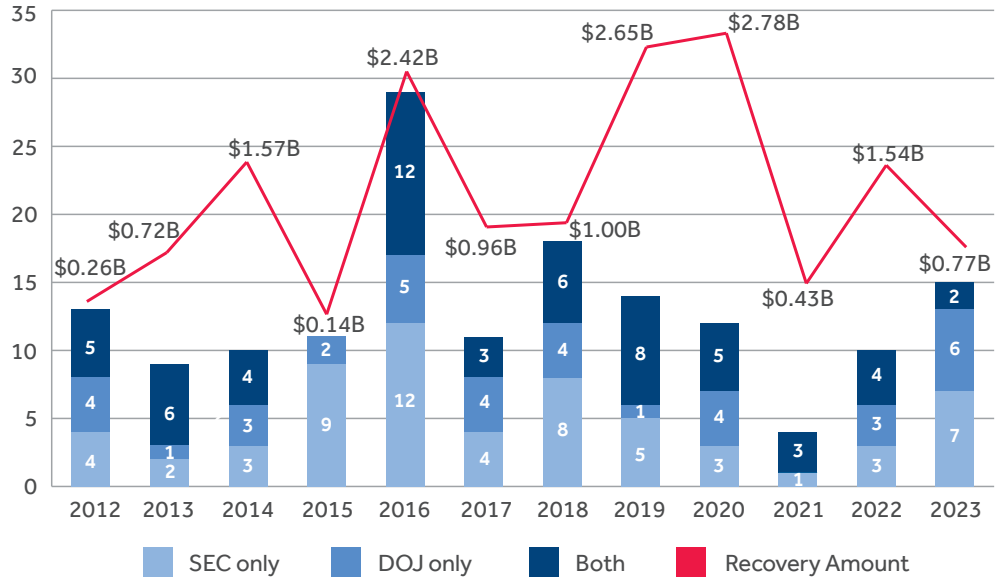
### **A. Enforcement Actions**

Of the 15 corporate resolutions, six were DOJ-only (including 3 where the company was not publicly-traded); seven were SEC-only; and only two actions were brought by both agencies in parallel. All of the SEC actions were brought as administrative cease-and-desist orders (which, as noted, may be in doubt pending the Supreme Court's decision in *SEC v. Jarkesy*). DOJ secured one guilty plea, four DPAs, one NPA, and two declinations with disgorgement under the CEP.

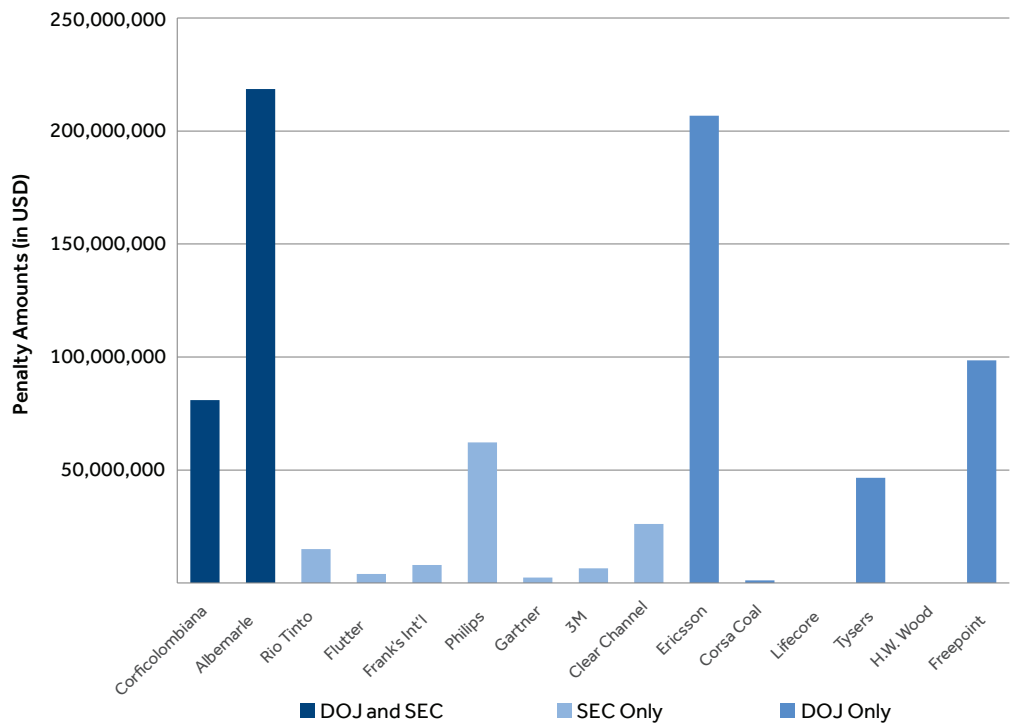
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### FCPA Corporate Enforcement Actions



### FCPA Penalties Imposed in 2023 Corporate Resolutions



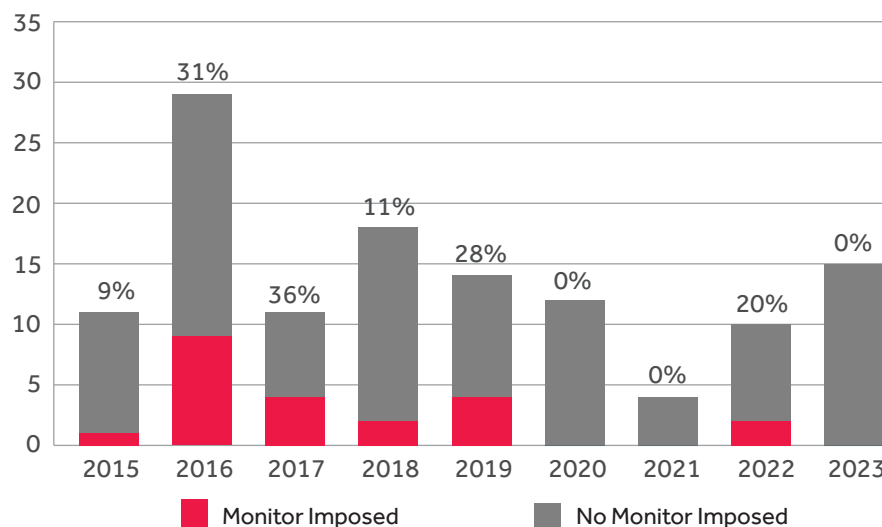
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Demonstrating the meaningful impact that significant investments in compliance programs and remediation can have, only one of the 15 FCPA resolutions in 2023 involved imposition of a corporate monitor. That resolution was the one-year extension of the monitorship initially imposed in connection with Ericsson’s 2019 DPA. This marks the third time in four years in which no new monitorships were imposed in FCPA cases. Acknowledging that the Biden DOJ announced in 2021 that it was rejecting Trump-era guidance suggesting that monitors would be the exception rather than the rule, it seems clear that, rather than any hard and fast rule, decisions to impose monitorships remain highly dependent on the facts of each case, including the remediation undertaken during the course of an investigation.

### % of FCPA Cases Imposing Independent Monitorships



Below are some key developments and takeaways from corporate enforcement in 2023:

- **Costly consequences follow breaches of DPAs.** Consistent with warnings that DOJ will impose serious repercussions for violations of its DPAs or NPAs,<sup>8</sup> it did so in March with telecom company **Telefonaktiebolaget LM Ericsson (“Ericsson”)**, as noted above. In particular, Ericsson pleaded guilty to the two original FCPA conspiracy counts from its 2019 DPA, paid an additional \$206 million penalty (on top of the more than \$1 billion imposed in 2019 by DOJ and the SEC), had its cooperation credit erased and its compliance

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8. See, e.g., Deputy Attorney General Lisa O. Monaco, “Keynote Address at ABA’s 36th National Institute on White Collar Crime” (Oct. 28, 2021), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute> (noting that “DPAs and NPAs are not a free pass, and there will be serious consequences for violating their terms”).

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monitorship extended for one year, and received approximately 14 months of probation.<sup>9</sup> Ericsson's 2019 DPA included an obligation to disclose all factual information and evidence related to the deferred charges as well as a forward-looking obligation to disclose evidence or allegations of conduct that may constitute an FCPA violation, as is standard in FCPA settlements. DOJ determined that Ericsson breached its DPA by failing to disclose factual information and evidence related to previously known activity in Djibouti and China and failing to report evidence and allegations of potentially violative conduct in Iraq.<sup>10</sup>

- **Most DOJ FCPA corporate resolutions involved actions against individuals.** Unlike prior years, six of DOJ's eight corporate resolutions in 2023 also involved allegedly culpable individuals being charged, either this year (Freeport), in the past few years (Tysers, H.W. Wood, Corsa, Ericsson), or by non-U.S. counterparts (Corficolumbiana).

“Demonstrating the meaningful impact that significant investments in compliance programs and remediation can have, ... [2023] marks the third time in four years in which no new monitorships were imposed in FCPA cases.”

- **Compensation Clawback pilot program in action.** In March, DOJ announced its **Pilot Program Regarding Compensation Incentives and Clawbacks**, which authorizes fine reductions for companies that reduce or recoup compensation from culpable employees or others with supervisory capacity, a stated DOJ effort to shift the burdens of corporate wrongdoing from shareholders to individual wrongdoers.<sup>11</sup> The program was first used in September when chemical company **Albemarle Corporation** agreed to pay approximately \$218 million to settle DOJ and SEC investigations into FCPA violations related to bribes paid through sales agents to officials in India, Indonesia, and Vietnam to secure

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9. See Plea Agreement, *United States v. Telefonaktiebolaget LM Ericsson*, No. 1:19-cr-0084-LTS (S.D.N.Y. Mar. 20, 2023), <https://www.justice.gov/media/1283586/dl?inline>.

10. See Kara Brockmeyer, Bruce E. Yannett and Joseph Ptomey, “Ericsson Reaches FCPA Related Settlement with DOJ,” FCPA Update, Vol. 14, No. 8 (Mar. 2023), <https://www.debevoise.com/insights/publications/2023/03/fcpa-update-march-2023>.

11. See *infra* Section III.2; U.S. Dep't of Justice, Criminal Div., “The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks” (Mar. 3, 2023), <https://www.justice.gov/criminal-fraud/file/1571941/download>.

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business with state-owned oil refineries.<sup>12</sup> Albemarle terminated 11 employees and withheld bonuses from 16 others involved in misconduct, leading to a penalty reduction of \$763,453—the amount of the withheld bonuses. And just 10 days into 2024, the pilot program was utilized again as German software company SAP paid more than \$220 million to resolve FCPA investigations with the SEC and DOJ.<sup>13</sup> SAP withheld \$109,141 in bonuses from employees suspected of misconduct and its criminal penalty was reduced commensurately. Pursuant to this pilot program, even unsuccessful efforts to claw back compensation, when made in good faith, can result in fine reductions of up to 25% of the compensation a company attempts to recoup.

- **More CEP declinations for companies that timely self-disclose.** The CEP creates a presumption of declinations for companies that voluntarily self-report to DOJ, cooperate with prosecutors, remediate and take steps to prevent future violations, and disgorge any ill-gotten gains. After a one-year drought in 2021 and rebound in 2022, 2023 featured two more CEP declinations in the FCPA space—and DOJ's first outside the FCPA space.<sup>14</sup> In March, **Corsa Coal Corporation** ("Corsa") received a declination pursuant to the CEP in connection with a DOJ investigation into a scheme to bribe government officials to secure contracts to supply coal to an Egyptian state-owned and controlled coke company. Corsa promptly notified DOJ, ultimately receiving credit for its voluntary self-disclosure, cooperation, and remediation. Corsa disgorged \$1.2 million (after accounting for inability-to-pay) to resolve DOJ's investigation.<sup>15</sup> And in November, pharmaceutical and medical device company **Lifecore Biomedical** received a declination pursuant to the CEP in connection with a DOJ investigation into actions of Lifecore's former U.S. subsidiary involving bribes to government officials in Mexico to obtain wastewater discharge permits. Lifecore promptly notified DOJ (as discussed further below) and disgorged \$406,505 to resolve DOJ's investigation.<sup>16</sup>

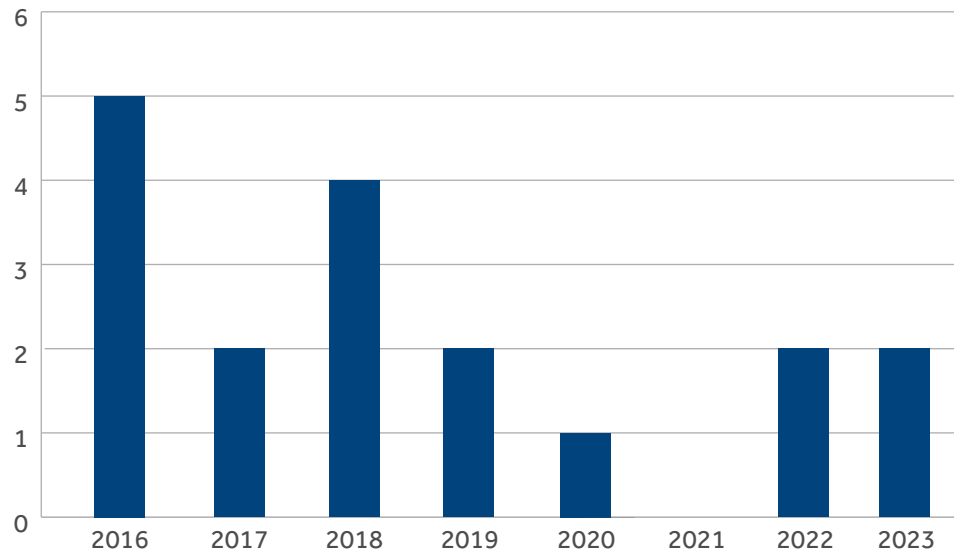
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12. See Winston M. Paes, Andreas A. Glimenakis and Caroline H. Wallace, "Penalty Reductions for Clawbacks and Late Self-Disclosure: Albemarle FCPA Settlement Highlights Recent DOJ Policies," FCPA Update, Vol. 15, No. 3 (Oct. 2023), <https://www.debevoise.com/insights/publications/2023/10/fcpa-update-october-2023>.
  13. U.S. Dep't of Justice Press Release No. 24-33, "SAP to Pay over \$220M to Resolve Foreign Bribery Investigations" (Jan. 10, 2024), <https://www.justice.gov/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>.
  14. Declination Letter from the U.S. Dep't of Justice, Criminal Division, Fraud Section to Benjamin D. Singer et. al., Re: *HealthSun Health Plans, Inc.* (Oct. 25, 2023), <https://www.justice.gov/criminal/case/healthsun-health-plans-inc>.
  15. See Bruce E. Yannett, Andreas A. Glimenakis, Paige Sferrazza and Ned Terrace, "Mining and Gaming Cases Round Out Q1 2023 FCPA Enforcement" at 5-7, FCPA Update, Vol. 14, No. 9 (Apr. 2023), <https://www.debevoise.com/insights/publications/2023/04/fcpa-update-april-2023> ["Apr. 2023 FCPA Update"].
  16. Declination Letter from the U.S. Dep't of Justice, Criminal Division, Fraud Section to Manuel A. Abascal, Re: *Lifecore Biomedical, Inc.* (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline> ["Lifecore Declination Letter"].



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## FCPA Declinations Pursuant to DOJ Corporate Enforcement Policy



- More insight regarding “timely” self-disclosure in the M&A context and more generally.** DOJ’s CEP offers its strongest incentives to companies that voluntarily self-disclose “immediately upon the company becoming aware of the allegation of misconduct.”<sup>17</sup> In October, DOJ announced a new **M&A Safe Harbor policy** for acquisition-related disclosures that sheds light on DOJ’s timeliness expectations. Under this policy, which largely tracks former guidance but provides some bright lines, an acquiring company that conducts thorough due diligence pre-acquisition or immediately post-acquisition in a bona fide M&A transaction and discloses potential wrongdoing at the company being acquired within six months of the deal closing—and fully cooperates and remediates within a year of closing and disgorges any ill-gotten gains—presumptively will not be prosecuted by DOJ.<sup>18</sup> Perhaps not coincidentally, not long after the new policy announcement, DOJ resolved its investigation into Lifecore via a CEP declination, as noted above, that illustrates the policy in action. Lifecore voluntarily self-disclosed wrongdoing it discovered during post-acquisition integration of an entity in Mexico. According to DOJ’s declination letter, Lifecore reported the misconduct within “three months of

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17. U.S. Dep’t of Justice, “Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy” (updated Jan. 2023), <https://www.justice.gov/opa/speech/file/1562851/download>.

18. See Oct. 2023 Debevoise Update, *supra* note 4.

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first discovering the possibility of misconduct and hours after an internal investigation confirmed that misconduct had occurred.”<sup>19</sup>

While not related to the M&A safe harbor, a comparison with the self-disclosure timeline in Albemarle sheds some light on the contours of timeliness under the CEP. Albemarle learned of allegations relating to conduct of certain intermediaries and reported the misconduct 16 months after first learning of the allegations and nine months after uncovering evidence of the misconduct in an internal investigation. DOJ determined that the self-disclosure was not “reasonably prompt” in that case. Ultimately, Albemarle did not receive disclosure credit or a CEP declination, but it received cooperation credit in part for its voluntary disclosure, had its action resolved via an NPA, and received a 45% penalty reduction—the highest reduction in an FCPA case since the January 2023 revisions to the CEP.<sup>20</sup>

“The continued prominence of liability flowing from the use of third parties—and prevalence of cases alleging inadequate recordkeeping and accounting controls around the justification and retention of third parties—highlights an ongoing need for diligence, documentation, and training, and surely business justification.”

- **CFTC participates in another foreign bribery resolution.** In December, Connecticut-based commodities trader **Freepoint Commodities** entered into a three-year DPA and agreed to pay more than \$98.5 million to settle investigations by DOJ, the CFTC, and Brazilian authorities related to a scheme to pay bribes to officials in Brazil to secure business from state-owned oil company, Petrobras. Since the CFTC issued an advisory in March 2019 regarding violations of the Commodity Exchange Act involving foreign corruption, Freepoint joins Glencore (May 2022) and Vitol (December 2020) as the latest major commodities trader to settle anti-bribery investigations related to schemes to secure business with Petrobras. In an example of ongoing coordination, DOJ will credit up to one-third of its \$68 million penalty against amounts paid to Brazilian authorities and credit up to 25% of its \$30.5 million forfeiture assessment against disgorgement paid to the CFTC.<sup>21</sup>

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19. Lifecore Declination Letter at 2.

20. See Oct. 2023 FCPA Update.

21. Deferred Prosecution Agreement, *United States v. Freepoint Commodities LLC.*, No. 3:23-cr-224 (D. Conn. Dec. 14, 2023), <https://www.justice.gov/opa/media/1329266/dl?inline>.

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- **All 15 FCPA resolutions involved third parties.** Not surprisingly, all of the 2023 corporate FCPA resolutions involved payments to foreign government officials being facilitated through third parties, including sales agents,<sup>22</sup> vendors,<sup>23</sup> consultants,<sup>24</sup> distributors and sub-dealers,<sup>25</sup> and travel agents.<sup>26</sup> The continued prominence of liability flowing from the use of third parties—and prevalence of cases alleging inadequate recordkeeping and accounting controls around the justification and retention of third parties—highlights an ongoing need for diligence, documentation, and training, and surely business justification.<sup>27</sup>
- **The SEC's cases highlight foundational risk—and the fact that even failed misconduct may result in scrutiny and penalties.** The majority of the SEC's nine FCPA enforcement actions in 2023 resulted in relatively modest penalties and disgorgement sums. Four of the actions were resolved for \$15 million or less (Rio Tinto, Frank's International, Gartner, and 3M), and only one topped \$100 million (Albemarle, which also had a DOJ component). Eight of the nine actions involved misconduct in a single foreign jurisdiction, and several yielded little to no profit. For example, global mining and metals company **Rio Tinto** paid a \$15 million civil penalty to settle SEC charges that it violated the FCPA's accounting provisions in connection with more than \$10 million in improperly recorded payments made to retain mining rights in Guinea from which it did not realize any value. Similarly, global gaming and sports betting company **Flutter Entertainment** paid a \$4 million civil penalty to settle SEC charges that it violated the FCPA's accounting provisions in connection with nearly \$9 million in payments to consultants in Russia. The payments were made, in part, to support an effort to legalize online poker in Russia, but the SEC did not allege that Flutter realized any profit from the alleged misconduct.<sup>28</sup>

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22. See Non-Prosecution Agreement Letter from the U.S. Dep't of Justice, Criminal Division to Courtney Trombly & William Barry, Re: *Albemarle* (Sept. 28, 2023), <https://www.justice.gov/opa/file/1316796/dl?inline>.
  23. See Deferred Prosecution Agreement, *United States v. Corporacion Financiera Colombiana S.A.*, No. 8:23-cr-00262-PJM (D. Md. Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>.
  24. See Plea Agreement Attachment A-2, *United States v. Telefonaktiebolaget LM Ericsson*, No. 1:19-cr-0084-LTS (S.D.N.Y. Mar. 20, 2023), <https://www.justice.gov/media/1283591/dl?inline>.
  25. See Order, *In re Koninklijke Philips N.V.*, Securities Exchange Act Release No. 97479 (May 11, 2023), <https://www.sec.gov/litigation/admin/2023/34-97479.pdf>.
  26. See Order, *In re 3M Co.*, Securities Exchange Act Release No. 98222 (Aug. 25, 2023), <https://www.sec.gov/litigation/admin/2023/34-98222.pdf> ["Aug. 2023 3M Order"].
  27. See Kara Brockmeyer, Winston M. Paes and Andreas Glimenakis, "SEC Settlements with Frank's International and Philips Highlight Fundamental FCPA Risks," FCPA Update, Vol. 14, No. 10 (May 2023), <https://www.debevoise.com/insights/publications/2023/05/fcpa-update-may-2023>; see Sept. 2023 FCPA Update, *infra* note 30.
  28. See Apr. 2023 FCPA Update, *supra* note 15, at 3-5.

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The SEC is clearly not limiting itself to the sprawling multijurisdictional bribery schemes with headline-grabbing penalty amounts; nor has it zeroed in on specific industries. Instead, companies large and small, operating in a variety of sectors and jurisdictions, are cautioned to mind foundational FCPA risks. While five of the SEC's cases involved alleged violations of the FCPA's anti-bribery provisions, as is typical, all nine involved alleged violations of the FCPA's books and records and internal controls provisions, which effectively create strict liability for recordkeeping violations.

- **Joint venture risks back in the spotlight.** While joint ventures continue to present opportunities to grow and expand across the world and into more industries, they are increasingly sources of risk and ripe targets for scrutiny.<sup>29</sup> In August, Colombian conglomerate **Grupo Aval** and its merchant-banking subsidiary **Corficolombiana** agreed to pay more than \$80 million to resolve investigations into bribes paid to foreign officials, through a JV in which the subsidiary was a minority investor, to secure lucrative highway contracts. This case also highlights the expansive reach of the FCPA, here reaching the actions of a JV consisting of non-U.S. companies procuring non-U.S. construction contracts because a parent of one of the entities is a U.S. issuer. Such issuers may effectively be strictly liable under the FCPA's accounting provisions for lapses in compliance at subsidiaries and affiliates they exercise control over, including overseas JVs.<sup>30</sup>
- **IPO readiness and anti-corruption risk assessments and remediation.** While M&A and the risks related to successor liability have rightly triggered a further increased emphasis on pre-deal diligence and post-transaction integration, the SEC's case against global oilfield services company **Frank's International** highlights also some of the risks private companies face in their journeys to become public. Because the SEC's accounting provisions apply when a company becomes an issuer—and because public companies are generally subject to higher regulatory burdens and more heightened scrutiny—companies preparing to go public should conduct thorough risk assessments of overseas operations and remediate, where necessary. In April, Frank's, which went public in 2013, paid nearly \$8 million to settle FCPA charges brought by the SEC related to alleged

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29. See, e.g., Kara Brockmeyer, Ivona Josipovic, Andreas Glimenakis and Joseph Ptomey, "Projects Ventured, Risks Gained: Joint Venture Risks and How to Mitigate Them," *Anti-Corruption Report* (Oct. 25, 2023), [https://www.anti-corruption.com/20260921/projects-ventured-risks-gained-joint-venture-risks-and-how-to-mitigate-them.html?utm\\_source=emailArticle&utm\\_medium=email&utm\\_campaign=emailArticle](https://www.anti-corruption.com/20260921/projects-ventured-risks-gained-joint-venture-risks-and-how-to-mitigate-them.html?utm_source=emailArticle&utm_medium=email&utm_campaign=emailArticle).

30. See Bruce E. Yannett, Andreas A. Glimenakis and Courtney Barger, "Shopping Trips, Chats, and Joint Ventures: Two Recent FCPA Cases Highlight Classic FCPA Risks" at 2-5, *FCPA Update*, Vol. 15, No. 2 (Sept. 2023), <https://www.debevoise.com/insights/publications/2023/09/fcpa-update-september-2023> ["Sept. 2023 FCPA Update"].

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misconduct that occurred between 2008 and 2014. The SEC found that Frank's had paid commissions to a sales agent who allegedly diverted a portion to pay bribes to officials to influence the award of oil and natural gas services contracts in Angola—both before going public and continuing thereafter. A company's actions prior to going public may be scrutinized and cited as evidence of recurring or ongoing misconduct, even if not fully calculated in any penalty amounts.<sup>31</sup>

- **Navigating compliance with local regulations.** In May, technology research and consulting company **Gartner** agreed to pay more than \$2.4 million to settle SEC charges that it violated the FCPA in connection with payments made to secure consulting contracts through a South African company it engaged under the justification of compliance with local regulations. Gartner purportedly hired a private company with close ties to a South African tax official, based on the suggestion of the South African Revenue Service, to meet the requirements of a local regulation. But Gartner already had satisfied the requirements of that regulation through its employment of other local contractors.<sup>32</sup> This case serves as a reminder that companies should carefully assess compliance with local regulations, often with the aid of local counsel, and take precautions when presented with suggested relationships by local officials.
- **Ecuadorian state-owned insurance fallout.** In November, reinsurance brokers **Tysers Insurance Brokers Limited (“Tysers”)** and **H.W. Wood Limited** entered into three-year DPAs to settle FCPA investigations related to a scheme to bribe government officials in Ecuador to obtain reinsurance business with Ecuadorian state-owned insurance companies. Tysers agreed to pay \$46.5 million, and H.W. Wood agreed to pay \$508,000 (reduced from the assessed \$24.8 million penalty following an inability-to-pay analysis). The DPAs follow the CEP declination that Jardine Lloyd Thompson (“JLT”) received in 2022.<sup>33</sup> In the case of Tysers and H.W. Wood, the companies paid bribes to Seguros Sucre and another state-owned insurance company along with three Ecuadorian officials. Unlike JLT, Tysers and H.W. Wood did not self-report their misconduct, but all three engaged in timely remedial measures, including addressing employees involved in the misconduct and enhancing their compliance programs.<sup>34</sup>

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31. Kara Brockmeyer, Winston M. Paes and Andreas Glimenakis, “SEC Settlements with Frank’s International and Philips Highlight Fundamental FCPA Risks” at 2-4, FCPA Update, Vol. 14, No. 10 (May 2023), <https://www.debevoise.com/insights/publications/2023/05/fcpa-update-may-2023>.

32. Order, *In re Gartner, Inc.*, Securities Exchange Act Release No. 97609 (May 26, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97609.pdf>.

33. See Kara Brockmeyer et al., “The Year 2022 in Review: Normalcy Returns as Regulatory Expectations Rise,” FCPA Update, Vol. 14, No. 6 (Jan. 2023), <https://www.debevoise.com/insights/publications/2023/01/fcpa-update-january-2023>.

34. U.S. Dep’t 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>; Declination Letter from the U.S. Dep’t of Justice, Criminal Division, Fraud Section to F. Joseph Warin, Re: Jardine Lloyd Thompson Group Holdings Ltd. (Mar. 18, 2022), <https://www.justice.gov/criminal-fraud/file/1486266/download>.

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## B. Heat Map by Geography

In 2023, U.S. authorities resolved corporate investigations involving alleged underlying conduct in 20 jurisdictions. Following a lull in 2022, conduct in China was implicated in a third of the 2023 cases, back in line with the more than 40 enforcement resolutions since 2015.

“The SEC is clearly not limiting itself to the sprawling multijurisdictional bribery schemes with headline-grabbing penalty amounts; nor has it zeroed in on specific industries. Instead, companies large and small, operating in a variety of sectors and jurisdictions, are cautioned to mind foundational FCPA risks.”

For example, in May, healthcare device manufacturer **Koninklijke Philips (“Philips”)** agreed to pay more than \$62 million to settle SEC charges that employees of Philips subsidiaries in China, which sold medical technology largely through distributors or sub-dealers, improperly influenced public hospital tenders to win bids to sell Philips medical equipment. In August, global manufacturer **3M Company** agreed to pay more than \$6.5 million to settle SEC charges that it violated the FCPA’s accounting provisions in connection with providing overseas travel and entertainment—through complicit travel agencies—to officials in China to induce product sales.<sup>35</sup> And in September, advertising company **Clear Channel Outdoor Holdings** agreed to pay more than \$26 million to settle SEC charges that it violated the FCPA’s anti-bribery and accounting provisions in connection with bribes paid through sham intermediaries to obtain advertising contracts.<sup>36</sup>

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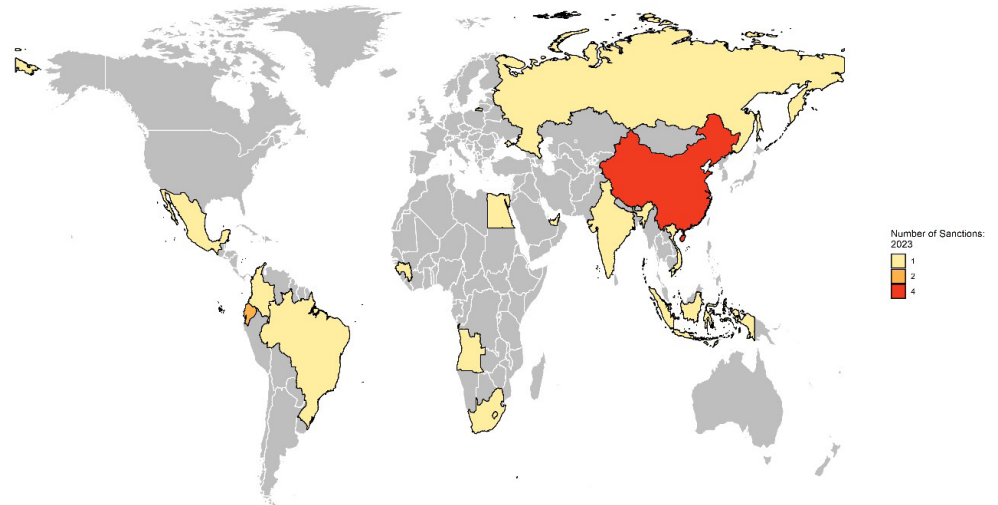
35. See Aug. 2023 3M Order.

36. Order, *In re Clear Channel Outdoor Holdings, Inc.*, Securities Exchange Act Release No. 98615 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf>.

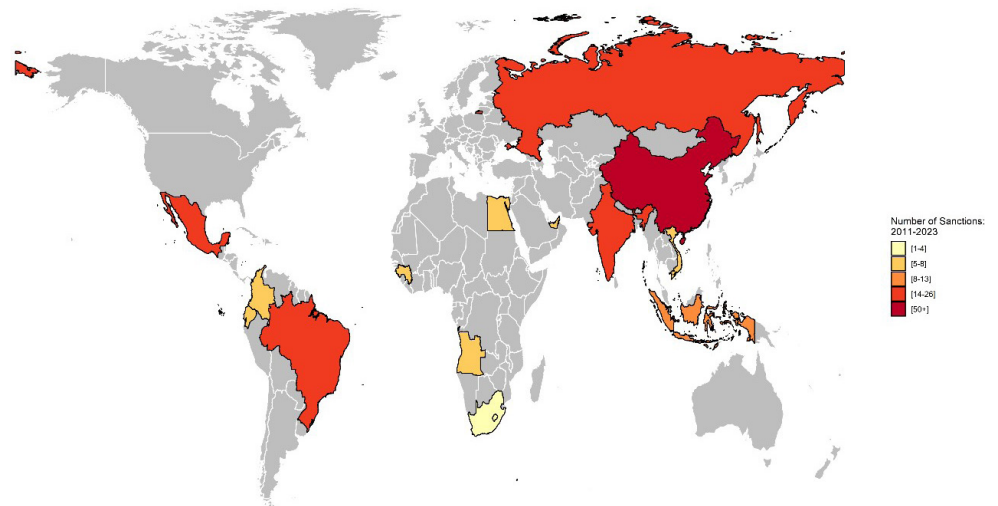
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### Corporate Resolutions: 2023 Heat Map



### Corporate Resolutions: 2011-2023 Heat Map



## II. FCPA Enforcement Against Individuals

In March, Deputy Attorney General Lisa Monaco reaffirmed DOJ’s commitment to enforcement against individuals, noting that individual accountability remains the “most important priority in corporate enforcement.”<sup>37</sup> At least 13 individuals were charged by DOJ or pleaded guilty to FCPA-related offenses in 2023. While this

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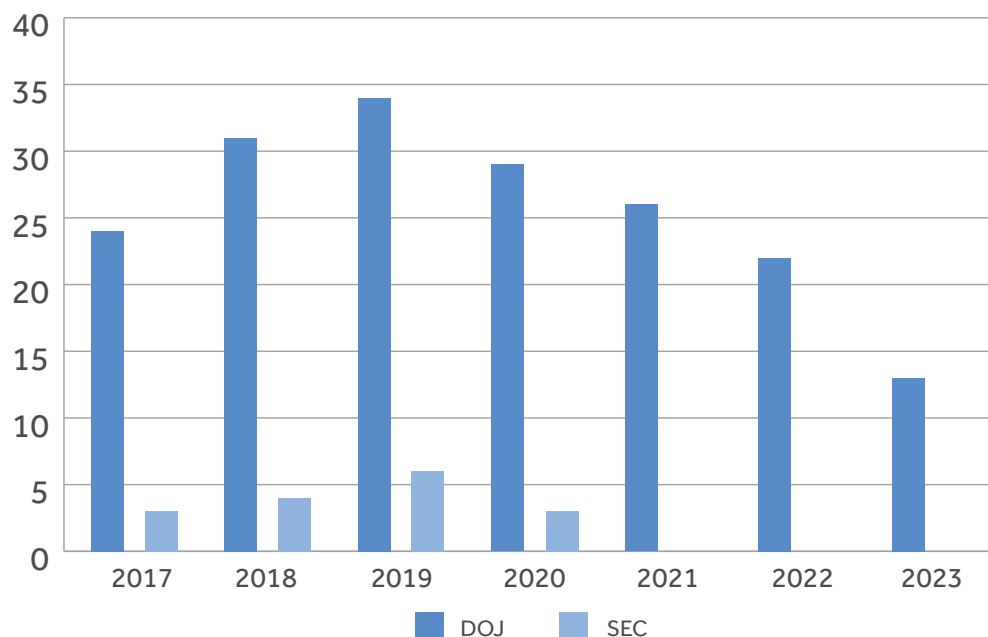
37. Deputy Attorney General Lisa Monaco, “Remarks as Prepared for Delivery to the American Bar Association National Institute on White Collar Crime” (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

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appears to reflect a lower number of publicly announced charges against individuals than in prior years, the number is likely a bit higher given that charges often remain under seal for some time, including in connection with corporate resolutions. For the third year in a row, the SEC has not announced charges against any individuals for FCPA violations.

### Charges Announced Against Individuals in FCPA-Related Actions



#### A. Individual DOJ Enforcement Actions Related to Corporate Resolutions

As noted above, unlike prior years, in 2023, at least six of DOJ’s eight corporate resolutions involved charges against individuals, whether brought concurrently or earlier in time—and whether brought by U.S. authorities or non-U.S. counterparts. For example:

- **Freepoint:** In February and August 2023, two oil and gas traders and a Brazil-based intermediary who acted as an agent for Freepoint were charged with conspiracy to violate the FCPA and to commit money laundering in connection with an alleged scheme to pay bribes to officials in Brazil to secure Petrobras contracts.<sup>38</sup>

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38. U.S. Dep’t 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>.



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- **Corsa Coal:** In November 2021 and March 2022, two former executives were charged for their roles in the alleged bribery scheme (that led to Corsa's 2023 CEP declination) involving commission payments to an intermediary to secure contracts in Egypt.<sup>39</sup>
- **Ericsson:** In June 2020, a former Ericsson employee was charged for his alleged role in a bribery scheme in Djibouti related to Ericsson's 2019 parent-level DPA and sub-level guilty plea.<sup>40</sup>

“[I]n 2023, at least six of DOJ’s eight corporate resolutions involved charges against individuals, whether brought concurrently or earlier in time—and whether brought by U.S. authorities or non-U.S. counterparts.”

- **Tysers and H.W. Wood:** Since 2020, DOJ has charged eight individuals in matters related to the bribery schemes involving Ecuadorian officials at state-owned insurance companies in connection with which Tysers and H.W. Wood settled with DOJ in 2023. One individual pleaded guilty in March and was sentenced to five months in prison and three years of supervised release and ordered to pay a \$1 million fine. Other individuals charged include the former chairman of Ecuadorian state-owned insurance companies in 2020 and a financial advisor in 2022, both for money laundering conspiracy. Before the related CEP declination that was issued to JLT in 2022, the former CEO of JLT's Colombian subsidiary and two intermediaries pleaded guilty to money laundering conspiracy in 2020.<sup>41</sup>
- **Corficolombiana:** In 2019, a Colombian court found Corficolombiana's former chairman guilty of corruption for approving a \$6.5 million bribe from JV partner Odebrecht to the former Colombian vice minister of transport to obtain a contract for a road project.<sup>42</sup> In addition to its 2023 resolutions with DOJ and the SEC, Corficolombiana resolved separate but related charges brought by

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39. Indictment, *United States v. Hobson*, No. 2:22-cr-00086-RJC (W.D. Pa. Mar. 29, 2022), ECF No. 3, [https://www.justice.gov/d9/press-releases/attachments/2022/03/31/hobson\\_indictment\\_0.pdf](https://www.justice.gov/d9/press-releases/attachments/2022/03/31/hobson_indictment_0.pdf); Information, *United States v. Cushmore*, No. 2:21-cr-00455-RJC (W.D. Pa. Nov. 3, 2021), ECF No. 3, <https://www.justice.gov/media/1181436/dl?inline>.

40. U.S. Dep't of Justice Press Release No. 23-234, "Former Ericsson Employee Charged For Role In Foreign Bribery Scheme" (Sept. 8, 2021), <https://www.justice.gov/usao-sdny/pr/former-ericsson-employee-charged-role-foreign-bribery-scheme>.

41. U.S. Dep't 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>.

42. David Feliba, "Former Corficolombiana chairman found guilty in Odebrecht corruption case," S&P Global Market Intelligence (Apr. 2, 2019), <https://www.spglobal.com/marketintelligence/en/news-insights/trending/iByL7FPtMB-FMIBofmnTQ2>.

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Colombia's Superintendency of Industry and Commerce for violations of Colombian antitrust laws related to the same underlying conduct.<sup>43</sup> In parallel with the U.S. announcement, Colombian prosecutors announced criminal indictments against 60 individuals allegedly involved in the case.<sup>44</sup>

**B. (Thus Far) Standalone Enforcement Actions Against Individuals**

DOJ also publicly announced several charges against individuals in cases not yet clearly related to FCPA corporate enforcement actions. Some, like those against FTX founder Samuel Bankman-Fried, have been high profile. Others relate to bribery schemes that have driven cases over the last few years. For example:

- **Venezuela Supreme Court:** In January 2023, a former Venezuela Supreme Court President and current Supreme Court Justice was indicted with money laundering conspiracy charges after allegedly resolving cases in favor of bribe payers.<sup>45</sup>
- **Currency exchange scheme:** In March, a former PDVSA official pleaded guilty to participating in a money laundering conspiracy tied to alleged FCPA violations in connection with a currency exchange scheme.<sup>46</sup>
- **FTX founder:** Separate from the fraud and conspiracy charges on which a jury convicted him in November 2023, FTX founder Samuel Bankman-Fried had been charged in March with allegedly authorizing an illicit transfer of about \$40 million in cryptocurrency to induce an official in China to unfreeze certain trading accounts that contained about \$1 billion in cryptocurrency. But prosecutors informed the presiding judge that they would not proceed with a second trial for those charges. Much of the evidence they would have offered had been presented at the first trial and could instead be considered at Bankman-Fried's sentencing hearing.<sup>47</sup>
- **Luxury accommodations to Senegalese official:** In May, a businessman in California was indicted for allegedly soliciting investments under false pretenses and corruptly offering gifts and luxury accommodations to government officials in Senegal to obtain a land-grant.<sup>48</sup>

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43. See Sept. 2023 FCPA Update, *supra* note 30.

44. Kejal Vyas, "Colombian Prosecutors to Charge 60 People With Graft Tied to Odebrecht Building Scandal," *Wall St. J.* (Aug. 17, 2023), [www.wsj.com/world/americas/colombian-prosecutors-to-charge-60-people-with-graft-tied-to-odebrecht-building-scandal-54cf4909](https://www.wsj.com/world/americas/colombian-prosecutors-to-charge-60-people-with-graft-tied-to-odebrecht-building-scandal-54cf4909).

45. Indictment, *United States v. Moreno*, No. 1:23-cr-20035-RNS (S.D. Fla. Jan. 26, 2023), ECF No. 12, <https://ecf.flsd.uscourts.gov/doc1/051025508516>.

46. Plea Agreement, *United States v. Nass*, No. 1:23-cr-20089-KMW (S.D. Fla. Mar. 29, 2023), ECF No. 15, <https://www.justice.gov/media/1288376/dl?inline>.

47. Superseding Indictment, *United States v. Bankman-Fried*, No. 1:22-cr-00673-LAK (S.D.N.Y. Mar. 28, 2023), ECF No. 115, <https://www.justice.gov/criminal-fraud/file/1593626/dl>; Letter by USA as to Samuel Bankman-Fried, *United States v. Bankman-Fried*, No. 1:22-cr-00673-LAK (S.D.N.Y. Dec. 29, 2023), ECF No. 388, <https://ecf.nysd.uscourts.gov/doc1/127134671822>.

48. First Superseding Indictment, *United States v. Diallo*, No. 8:23-cr-00054-JWH (C.D. Cal. Sept. 20, 2023), ECF No. 29, <https://www.justice.gov/d9/2023-09/sa-23-cr-00054-jwh-fsi-diallo-filed.pdf>.

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- **Food contract scheme:** In September, a Venezuelan intermediary was charged for his alleged role in a conspiracy to pay bribes to Venezuelan government officials to obtain contracts from Venezuelan state-owned food-purchasing and import and export companies.<sup>49</sup>
- **Honduran law enforcement uniforms:** In November, a Georgia businessman, a former Honduran official, and a former Florida resident were charged for their alleged participation in a bribery scheme to provide uniforms to the Honduran National Police.<sup>50</sup>

### C. DOJ Appeals and Trial Updates

In addition to bringing charges, DOJ litigated appeals, oversaw extraditions, and had two of its jury convictions vacated:

- **PDVSA appeals:** The Fifth Circuit reversed orders to dismiss all counts against a Swiss wealth-management partner and an employee of a different Swiss wealth-management firm. The two were charged for their alleged participation in a bribery scheme involving Venezuelan officials to obtain preferential treatment from PDVSA.<sup>51</sup> Later, the Fifth Circuit affirmed the district court's decision to dismiss the employee's charges under the Speedy Trial Act, but remanded the case to allow the district court to reconsider whether to dismiss the indictment with or without prejudice. Further lower court proceedings are ongoing.<sup>52</sup>
- **Mozambique tuna bonds scandal:** The former Finance Minister of Mozambique was extradited to the United States to face criminal charges after spending almost five years in prison in South Africa. The former official was indicted on conspiracy, fraud, and money laundering charges for his alleged role in the "tuna bonds" scandal that used loan proceeds to pay bribes to Mozambican officials.<sup>53</sup> He was first charged with seven other individuals in late 2018.<sup>54</sup>

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49. Information, *United States v. Contreras*, No. 1:23-cr-20364 (S.D. Fla. Sept. 11, 2023), ECF No. 1, <https://ecf.flsd.uscourts.gov/doc1/051126374891>.

50. U.S. Dep't 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>.

51. Order of United States Court of Appeals, *United States v. Rafoi* consolidated with *United States v. Murta*, No. 21-20658 (5th Cir. Feb. 28, 2023), ECF No. 129-1, <https://www.justice.gov/media/1283501/dl?inline>.

52. Order of United States Court of Appeals – Per Curiam, *United States v. Murta*, No. 4:17-cr-00514 (5th Cir. Jan. 5, 2024), ECF No. 581, <https://ecf.txsd.uscourts.gov/doc1/179144111269>.

53. Mogomotsi Magome, "Former Mozambique finance minister is extradited to the US to face trial over \$2 billion scandal," AP News (July 12, 2023), <https://apnews.com/article/south-africa-mozambique-finance-minister-extradition-b96d60aa195b5975dd8aba79bd4e362b>.

54. U.S. Dep't of Justice Press Release No. 19-201, "Mozambique's Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme that Victimized U.S. Investors" (Mar. 7, 2019), <https://www.justice.gov/opa/pr/mozambique-s-former-finance-minister-indicted-alongside-other-former-mozambican-officials>.

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### III. FCPA-Related Policy and Case Law Updates

As noted above, 2023 brought many changes to the landscape of FCPA-related policies and case law. Below are the most notable.

#### A. Enforcement Policy Updates

In 2023, DOJ announced a number of significant updates to its corporate enforcement policies, setting out new incentives to self-report and cooperate.

##### 1. DOJ Revised and Expanded its Corporate Enforcement Policy

In January 2023, then-Assistant Attorney General Kenneth A. Polite, Jr. announced “the first significant changes” to DOJ’s CEP, significantly increasing the potential benefits for cooperation and remediation for both companies that self-disclose and those that do not.<sup>55</sup>

- **Recidivism and other aggravating factors no longer full bar to a declination.** Prosecutors may now offer declinations even where aggravating factors like recidivism exist, so long as the company timely self-discloses (immediately, for companies with aggravating factors), provides extraordinary cooperation, and has an effective compliance program that identified the misconduct. Where a declination is inappropriate, voluntary disclosure, full cooperation, and effective remediation will yield a discount of between 50% and 75% off the low end of the fine range. The previous maximum discount was 50%. Where a company is a recidivist, the 50% to 75% will be taken from a higher point in the range, depending on the circumstances.
- **Total potential discount for cooperation/remediation increased.** Even where a company does not voluntarily disclose, full cooperation and effective remediation can earn a discount of up to 50% off the low end of the Guidelines range, doubling the previous 25% cap—and companies are already seeing the benefits.<sup>56</sup>
- **Difference between “full” and “extraordinary” cooperation remains hazy.** DOJ has emphasized the distinction between “full” and “extraordinary” cooperation. The core concepts of cooperation are “immediacy, consistency, degree, and impact.” The difference between “full” and “extraordinary” seems to be a matter of degree. AAG Polite stated that even “gold-standard cooperation” would qualify only as “full.”

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55. See Jan. 2023 Debevoise Update, *supra* note 4.

56. See *supra* discussing Albemarle receiving a 45% discount instead of being capped at 25%.

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**2. DOJ Issued Updates That Further Heighten Compliance Expectations**

DOJ's ECCP contains a list of questions that DOJ uses to evaluate companies' compliance programs when making charging decisions. The Criminal Division issued its first ECCP in 2017, revising it in 2019 and 2020 and, most recently, 2023. The 2023 update added guidance regarding two increasingly important aspects: implementing compliance-promoting compensation structures and monitoring off-system communications.<sup>57</sup>

- **Ephemeral messaging remains a priority and also has been in the SEC's crosshairs.** The rise of communications on personal devices and via ephemeral messaging platforms presents risks, both with respect to recordkeeping requirements under the securities laws and more generally for compliance reasons. DOJ prosecutors are now instructed to consider the types of channels used for communication and the preservation and deletion settings in place; whether the company permits employees to bring their own devices and the types of preservation policies in place; how policies and procedures governing messaging applications are tailored to the company's unique risk profile; and how policies and procedures have been communicated to employees and whether they are regularly and consistently enforced. A company's answers or lack of answers to these questions may impact whether the government pursues criminal charges.

**“The 2023 update [to DOJ's ECCP] added guidance regarding two increasingly important aspects: implementing compliance-promoting compensation structures and monitoring off-system communications.”**

Although not specific to FCPA enforcement, the SEC's ongoing sweep of off-channel communications cases—which has resulted in more than \$1.5 billion in civil penalties from 40 firms since December 2021 for failures to maintain electronic communications—has demonstrated the government's concern regarding ephemeral messaging. All of the SEC's cases in this sweep thus far have involved firms that had relevant policies in place but widespread failures to implement them.<sup>58</sup>

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57. See Mar. 2023 FCPA Update, *supra* note 4.

58. Gurbir S. Grewal, SEC Enforcement Director, “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>.

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- **New focus on compensation design and incentive structures.** Under the revised ECCP, prosecutors are instructed to consider how a company's compensation structure promotes compliance and how effective that structure is in practice. Prosecutors will look at whether the company maintains and enforces policies and procedures that allow compliance performance to proactively and retroactively influence compensation, such as implementing of clawback procedures and rewards for exemplary compliance; tracks metrics and other data relating to disciplinary measures and adjusts practices accordingly; and maintains a nimble compliance function that gathers insights through a hotline and other indicia of compliance.

As noted above, DOJ relatedly launched in March the Compensation Clawback pilot program on Compensation Incentives and Clawbacks, which provides that prosecutors may now acknowledge a company's clawbacks of compensation paid to wrongdoers, and correspondingly reduce corporate fines. Accordingly, clawbacks and the concerns regarding the implementation of this pilot program—for example, that clawbacks present issues for companies that operate in jurisdictions with significant employee protections or create litigation costs that quickly outweigh any benefit from clawbacks—will remain a focus over the pilot's three-year span.

### 3. Revised Memo on Selecting Monitors in Criminal Division Matters

In March, DOJ issued a revised memo on the Selection of Monitors in Criminal Division matters, building on the 2018 Benczkowski Memo and incorporating updates previewed in the October 2021 and September 2022 Monaco Memos. The memo clarifies that prosecutors should neither presume for nor against the imposition of a monitor, but rather should consider as part of a facts-and-circumstances analysis a non-exhaustive list of 10 factors, including whether, at the time of the resolution, the company implemented an effective compliance program and sufficient controls to detect and prevent similar misconduct in the future; whether it adequately tested its compliance program and internal controls to demonstrate that they would likely detect and prevent similar misconduct in the future; and whether it took adequate investigative and remedial measures to address the underlying criminal conduct.

The memo also clarified that many of the requirements for monitors also apply to monitor teams; monitor selections are made according to DOJ's commitment to diversity, equity and inclusion; and that the "cooling off" period has been increased from no less than two years to no less than three years from the date of the monitor's termination.<sup>59</sup>

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59. Mar. 2023 FCPA Update, *supra* note 4, at 10-12.

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**B. Developments in Case Law****1. Fifth Circuit Holds that Mere Allegation of Agency is Sufficient at Motion to Dismiss Stage**

The Fifth Circuit declined to join the Second Circuit in rejecting the application of conspiracy or aiding-and-abetting liability to foreign non-issuers not otherwise covered by the FCPA in a consolidated case brought against two defendants, Daisy Teresa Rafoi Bleuler and Paulo Jorge Da Costa Casquerio Murta.<sup>60</sup>

Last February, the Fifth Circuit unanimously reversed the district court's dismissal of the indictments against Rafoi and Murta on every ground, holding that the government's mere allegation of "agency" in connection with FCPA conspiracy charges was sufficient to withstand a motion to dismiss, and holding that extraterritoriality is a merits issue, not an issue to be resolved at the outset as a question of subject matter jurisdiction. The court also held that the use of "agent" is not unconstitutionally vague here, even though the FCPA never defines the term, because under common-law definition of the term, an ordinary person would have understood that setting up bank accounts for other people to conceal a bribery scheme "tread[s] close to a reasonably-defined line of illegality under an agency theory."<sup>61</sup>

On remand, the district court granted the defendant's renewed motion to dismiss on ground that DOJ violated the defendant's rights under the Speedy Trial Act and the Sixth Amendment. In January, the Fifth Circuit affirmed the dismissal under the Speedy Trial Act but reversed and remanded the lower court's order to dismiss with prejudice, ordering that a new district court judge be assigned.<sup>62</sup>

**2. Coburn Trial Developments Reveal Downsides to Extensive Corporate Cooperation**

The ongoing FCPA case against former Cognizant Technology Solutions executives Gordon Coburn and Steven Schwartz before Judge Kevin McNulty in the District of New Jersey continues to illustrate the complexities that companies face when conducting internal investigations and seeking to cooperate with the government.

In July 2023, the court held that neither a government policy that strongly incentivizes companies to focus on individuals (e.g., the 2015 Yates memo and 2016 pilot program version of the CEP), nor the deliberate tailoring of an

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60. See, e.g., Bruce E. Yannett, Winston M. Paes, Philip Rohlik, Sarah Grace DeYoung, "Fifth Circuit Reverses FCPA Dismissals, Holding Agency Allegations Sufficient Without Reaching Secondary Liability Issue of Hoskins" at 1-6, FCPA Update Vol. 14, No. 7 (Feb. 2023), <https://www.debevoise.com/insights/publications/2023/02/fcpa-update-february-2023>.

61. *United States v. Rafoi*, 60 F.4th 982, 995-96 (5th Cir. 2023).

62. *United States v. Murta*, No. 23-20276, 2024 WL 64764, at \*21 (5th Cir. Jan. 5, 2024).

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internal investigation in response to those incentives, renders a company a state actor for purposes of whether cooperation became so close as to implicate an employee's constitutional rights. Defendants, who argued that DOJ "outsourced" its investigation to their former employer as was done in *Connolly*, subpoenaed Cognizant and moved to suppress statements they made during interviews the company took during its internal investigation on grounds that they were compelled by an investigation attributable to DOJ (a *Garrity* motion). Defendants had also sought to compel DOJ to search Cognizant's files for exculpatory evidence in line with *Brady* on grounds that DOJ had constructive possession of the records due to the alleged outsourcing of the investigation.<sup>63</sup> The court rejected these arguments, finding that the internal investigation was undertaken by the company on its own accord and had not been "outsourced" because DOJ did not learn of the investigation until the company voluntarily disclosed the matter, after initial interviews with the executives. Although the company turned over interview notes, shared updates, and responded to DOJ inquiries, the court found that there was "literally no document or testimony establishing that the Government provided any direction to Cognizant" in connection with the interviews with the defendants.

**"The ongoing FCPA case against former Cognizant ... executives ... continues to illustrate the complexities that companies face when conducting internal investigations and seeking to cooperate with the government."**

Combined with the court's previous ruling that readouts of interview summaries to the government constituted a broad waiver of privilege concerning all materials relied upon for those disclosures,<sup>64</sup> the court's rulings in *Coburn* set up guardrails for companies conducting internal investigations, but suggest that only in very narrow circumstances will courts find that the government has "outsourced" its investigation to a private party. While the chances of the government "outsourcing" an investigation as in *Connolly* is low, recent developments in *Coburn* offer some

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63. See Kara Brockmeyer, Winston M. Paes, & Nora Niazian, "Cooperation and the Limits of *Garrity*: Relevant Developments from the Coburn Trial," FCPA Update, Vol. 15, No. 1 (Aug. 2023), <https://www.debevoise.com/insights/publications/2023/08/fcpa-update-august-2023> ["Aug. 2023 FCPA Update"].

64. See Andrew M. Levine, Jane Shvets, & Bruce E. Yannett, "District Court Addresses Issues Arising from Corporate Investigations and Voluntary Cooperation with DOJ" at 2, Debevoise Update (Feb. 17, 2022), <https://www.debevoise.com/insights/publications/2022/02/district-court-addresses-issues-arising-from>.



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guidance for companies to consider as they conduct investigations and seek to cooperate with the government.<sup>65</sup>

The trial was supposed to begin last October, but it has been significantly delayed and reassigned to a new judge, who has slated the pretrial conference for April 2024 and jury selection for May 2024.<sup>66</sup>

### 3. *Jarkesy* Could End Administrative Hearings for Some SEC Actions

After an SEC administrative proceeding alleging that George Jarkesy, Jr. and his investment advisor committed fraud, Jarkesy was required to pay a civil fine of \$300,000 and to disgorge \$685,000. Jarkesy appealed, arguing in part that SEC administrative proceedings violate the Seventh Amendment right to a jury trial, eventually landing at the Supreme Court in November.<sup>67</sup> This decision could have far-reaching effects on the SEC's ability to use its administrative cease-and-desist proceedings to resolve cases against FCPA defendants.

At oral argument, three of the Court's justices appeared to view SEC enforcement through an *Atlas Roofing* lens—the 1977 administrative law case affirming Congress's power to delegate the choice of whether to bring actions in federal court or through an administrative proceeding to executive agencies like the SEC.<sup>68</sup> The majority, however, appeared to disagree. Chief Justice John Roberts noted that the government today is “much more likely [than in 1977] to . . . proceed against you before one of its own agencies than in court.”<sup>69</sup> Other justices seemed inclined to adopt a narrow holding, requiring statutory securities fraud actions like those brought against Jarkesy to proceed in federal court because they are “sufficiently close to common-law fraud,” where the Seventh Amendment ought to apply, and leave newer regulations to be adjudicated through administrative proceedings.<sup>70</sup> A decision is expected before July.<sup>71</sup>

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65. See FCPA Update August 2023, *supra* note 63, at 7-8.

66. Trial Scheduling Order at 4, *United States v. Coburn*, No. 2:19-cr-00120 (Dec. 20, 2023).

67. *Jarkesy v. SEC*, 34 F.4th 446, 451 (5th Cir. 2022).

68. See, e.g., Transcript of Oral Argument at 55-62, *SEC v. Jarkesy*, No. 22-859 (U.S. Nov. 29, 2023), [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2023/22-859\\_n758.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-859_n758.pdf).

69. *Id.* at 41.

70. *Id.* at 127.

71. Jess Bravi and Dave Michaels, “Supreme Court Looks Poised to Curb SEC Enforcement Powers,” *Wall St. J.* (Nov. 29, 2023), <https://www.wsj.com/us-news/law/supreme-court-weighs-whether-sec-violates-defendants-jury-trial-rights-08a885d5>.

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**C. Other Updates****1. Congress Passed FEPA, Targeting “Demand Side” of Foreign Bribery**

On December 14, 2023, Congress passed FEPA, which federally criminalizes any foreign government official demanding or receiving a bribe from a U.S. citizen, resident, or company in exchange for taking or omitting to take an official action or conferring any improper business-related advantage. FEPA establishes a new federal criminal offense in similar terms to the FCPA’s anti-bribery provisions.<sup>72</sup>

FEPA, like the FCPA, defines “foreign official” very broadly and a conviction requires a corrupt *quid pro quo*. FEPA’s jurisdictional reach is similar to that of the FCPA: a sufficient nexus to the United States through demands made to issuers of U.S.-listed securities, U.S. domestic concerns, or any person while within any U.S. territory. FEPA’s enforcement, however, may be more difficult than that of the FCPA as jurisdictional challenges may exist for foreign officials beyond the reach of U.S. authorities, and the significant political and diplomatic consequences involved when charging foreign officials.<sup>73</sup>

The law offers a potentially powerful new tool that U.S. enforcement authorities can use to address situations where money laundering or similar charges would not be available.

**2. SEC Whistleblower Reports and Awards**

In 2023, the SEC issued whistleblower awards totaling nearly \$600 million, the largest sum ever awarded in a single year. The Commission received another record number of tips (18,354), approximately 50% more than in 2022.<sup>74</sup> Despite this significant uptick in total tips, the number of FCPA-related tips has continued to remain largely consistent over the past five years, as shown in the chart below.

In addition to the record value of awards and number of tips, the SEC issued its largest-ever award to a single whistleblower in 2023 (\$279 million), which has been publicly reported to relate to telecom company Ericsson’s 2019 FCPA settlements.<sup>75</sup> By itself, that award exceeds FY 2022’s total dollar amount in whistleblower awards by 22%. The SEC has signaled that tips that are timely, reliable, and specific, including tips that point to non-public content, will be handsomely rewarded.

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72. National Defense Authorization Act for Fiscal Year 2024, H.R. 2670, Section 5101, available at <https://www.congress.gov/118/bills/hr2670/BILLS-118hr2670enr.pdf>.

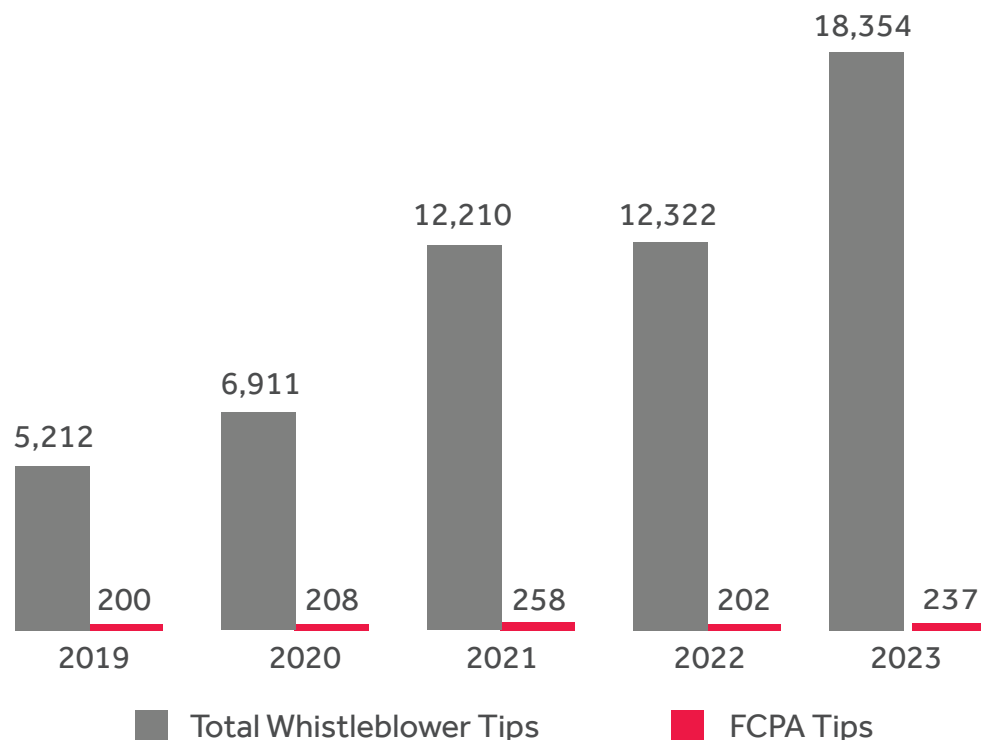
73. See Dec. 2023 Debevoise Debrief, *supra* note 6.

74. U.S. Sec. & Exch. Comm’n, Office of the Whistleblower, “Annual Report to Congress for Fiscal Year 2023” at 1-5 (Nov. 14, 2023), <https://www.sec.gov/files/fy23-annual-report.pdf>.

75. See Winston M. Paes and Andreas A. Glimenakis, “FCPA Case Yield’s SEC’s Largest-Ever Whistleblower Award,” FCPA Update, Vol. 14, No. 11 (June 2023), <https://www.debevoise.com/insights/publications/2023/06/fcpa-update-june-2023> (citing WSJ article).

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## SEC Whistleblower Tips (2019-2023)



### 3. Reemergence of FCPA Opinion Releases

In 2023, DOJ released two opinion releases, which have become increasingly rare. Prior to this year, there were only two opinion releases since 2014 (in 2020 and 2022). DOJ's opinion release procedure enables companies to request DOJ's views on whether a particular fact pattern would violate the FCPA. The company can only inquire about specified, prospective conduct rather than hypotheticals. The opinions then create a rebuttable presumption of a non-violation of the FCPA for that specific conduct.<sup>76</sup>

The precedential limits of the opinion to the narrow set of facts at issue may minimize companies' interest in seeking opinions, and the length of time involved in procuring responses can further erode their usefulness, but such releases provide interesting, if factually limited, insight into DOJ's approach to FCPA enforcement.

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76. See U.S. Dep't of Justice Crim. Div. & SEC Enf't Div., "A Resource Guide to the U.S. Foreign Corrupt Practices Act: Second Edition" at 84-85 (2020), <https://www.justice.gov/criminal-fraud/file/1292051/download>.

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This year DOJ released opinions in August and October, resolving requests from an adoption services provider (23-01) and a government contractor (23-02).<sup>77</sup>

In the first opinion release, the adoption services provider requested guidance regarding the legality of providing travel and accommodations for foreign officials to visit the United States for post-adoption supervision. The requester represented that, among other things, the visits were necessitated by the foreign government's requirements that officials meet annually with adopted children, payments would be made directly to providers, officials would be chosen by the government agency, and expenditures would be modest and not cover any officials' family members. DOJ, pointing to prior guidance allowing similar conduct, cleared the request and noted that the requested expenses were reasonable, bona fide expenses that reflected no corrupt intent.<sup>78</sup>

**“In 2023, the SEC issued whistleblower awards totaling nearly \$600 million, the largest sum ever awarded in a single year. The Commission received another record number of tips (18,354), approximately 50% more than in 2022.”**

In the second opinion release, a government contractor sought guidance regarding the legality of complying with a government contract requiring the contractor to provide logistical support to foreign officials, including stipends to officials who attend training events. The contracting agency represented that the stipend is expressly authorized by federal law (the Foreign Assistance Act), the stipend amounts are modest and approved by the U.S. government, and the requester obtained the task order through a competitive selection process. DOJ found the conduct permissible, noting that the contracting agency's assertions demonstrate that the requested stipends neither reflected a corrupt intent nor were for the purpose of obtaining business.<sup>79</sup>

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77. Kara Brockmeyer, Andrew M. Levine, Philip Rohlik and Amaya Contreras Driggs, "DOJ Issues Opinion Procedure Release on Providing Stipends to Foreign Officials," FCPA Update, Vol. 15, No. 4 (Nov. 2023), <https://www.debevoise.com/insights/publications/2023/11/fcpa-update-november-2023>.

78. U.S. Dep't of Justice Op. Proc. Release 23-01 (Aug. 14, 2023), <https://www.justice.gov/media/1320611/dl?inline>.

79. U.S. Dep't of Justice Op. Proc. Release 23-02 (Oct. 25, 2023), <https://www.justice.gov/media/1323631/dl?inline>.

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**4. FinCEN's Beneficial Ownership Database**

In January 2024, FinCEN's new rule regarding access to a corporate beneficial ownership database under the 2021 Corporate Transparency Act became effective. The database, which collects information about a company's owners, would be used to identify beneficial ownership and increase accountability, particularly for shell companies. Under the new rule, federal agencies engaged in national security, intelligence, or law enforcement, including state, local, and tribal law enforcement agencies with a court authorization, could access the database.<sup>80</sup> Certain supervised financial institutions with customer due diligence requirements and obligations under anti-money laundering and sanctions laws would also have access. Financial institutions would be required to audit their database usage, and FinCEN has indicated that it would take necessary enforcement actions to ensure access restrictions are followed.<sup>81</sup> These new beneficial ownership requirements, particularly when combined with the new FEPA law, could have a meaningful impact on DOJ's ability to prosecute corrupt foreign officials.

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80. See Dec. 2023 Debevoise Update, *supra* note 7.

81. Mengqi Sun, "Banks, Law Enforcement Will Have Access to New Beneficial Ownership Database," Wall St. J. (Dec. 21, 2023), <https://www.wsj.com/articles/banks-law-enforcement-will-have-access-to-new-beneficial-ownership-database-8e88dd5d?mod=djemRiskCompliance>.

## United Kingdom

The past year has been a period of significant change for the UK's Serious Fraud Office (the "SFO"). In September, Lisa Osofsky stepped down as Director and was replaced by former Assistant Commissioner of the Metropolitan Police Service, Nick Ephgrave QPM, who has already taken a proactive approach in the role, commencing three new investigations since his appointment. 2023 also saw a major enhancement of the SFO's powers through the new Economic Crime and Corporate Transparency Act 2023 (the "ECCT Act"). The SFO has continued its recent trend of being more active in the pursuit of fraud offences than bribery, with investigators bringing actions against a range of individuals and corporates for fraudulent activities.

For the UK Financial Conduct Authority (the "FCA"), 2023 saw a marked drop in the number of penalties imposed on firms and individuals (8 compared to 26 in 2022) as well as the total value of the fines imposed (£52.8 million compared to £215.8 million in 2022). As with the SFO, the FCA has seen a significant turnover of top personnel this year, with Therese Chambers and Steve Smart appointed as the new co-executive directors of the FCA's enforcement division.

### I. Enforcement Activity

#### **A. Serious Fraud Office**

##### **1. Deferred Prosecution Agreements ("DPAs")**

For the second consecutive year, the SFO did not enter into any DPAs. The total number of DPAs secured by the SFO since they were introduced in 2014 remains at 12.

However, in an important reminder that the SFO is not the only enforcement agency empowered to enter into DPAs, on December 5, 2023, the High Court approved a DPA between the Crown Prosecution Service (the "CPS") and international sports betting company Entain plc ("Entain") – the CPS's first ever DPA.

The DPA followed an investigation by HM Revenue & Customs ("HMRC") (the UK's tax authority) into failures by Entain to prevent bribery by its former employees and various third-party suppliers, contrary to s7 Bribery Act 2010. The Statement of Facts and full DPA judgment remain embargoed until possible related proceedings against individuals are concluded. It has been reported that the relevant conduct took place primarily in Turkey between July 2011 and December 2017, a period during which gambling was illegal in that jurisdiction.

Under the DPA, Entain agreed to pay a total of £615 million, comprising a financial penalty and disgorgement of profits totalling £585 million, a charitable donation of

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£20 million, and a contribution to the CPS and HMRC costs of £10 million. This is the second largest penalty imposed since DPAs were introduced in the United Kingdom.

In approving the DPA, Dame Victoria Sharpe DBE acknowledged that Entain's fraudulent conduct was undoubtedly serious. The Judge held that, in light of Entain's cooperation with the investigation, various admissions of guilt, and the significant changes made to its senior management and compliance procedures since the indictment period, a prosecution would have had disproportionate consequences. On this basis, the interests of justice were better served by a DPA.

It is apparent from the Entain DPA, as well as the previous Airbus and Rolls-Royce DPAs, that a failure to self-report to authorities in a timely manner will not automatically preclude a company from securing a DPA, so long as the company is highly cooperative during the investigation and undertakes wide-ranging compliance remediation.

## 2. Pursuing Individuals

The SFO had some success last year in relation to the prosecution of individuals for corruption and fraud. However, there were also a number of setbacks, including several high-profile acquittals.

Notable actions against individuals in 2023 included:

- In February, the former CEO of Balli Steel PLC ("Balli") pleaded guilty to one count of fraudulent trading and was sentenced to six and a half years' custody. This was followed by the convictions of two former Balli executives for conspiracy to defraud. A fourth individual was acquitted of related charges. The SFO investigation into Balli, which started in 2014, found that Balli had defrauded 20 banks of over £170 million by securing loans using false contracts for fictitious steel shipments; the company collapsed in 2013.
- In May, the SFO secured its first conviction of an individual linked to a corporate DPA, albeit not one of the SFO's major cases. The SFO has previously been heavily criticised for its repeated failure to prosecute and/or convict individuals following the conclusion of DPAs entered into by their employers; there have been unsuccessful attempts to prosecute 16 individuals whose actions formed the basis of corporate DPAs. Roger Dewhirst, project manager of Bluu Solutions Ltd ("Bluu"), pleaded guilty to accepting bribes from several companies in exchange for awarding them office refurbishment contracts and was sentenced to nine months' imprisonment, suspended for 18 months. The underlying DPA had been entered into with Bluu and Tettris Projects Ltd in July 2021. Dewhirst's three co-defendants were each unanimously acquitted at trial, having argued that the payments were not linked to any corrupt motive. Charges were dropped against another individual.

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- In June, two executives and a consultant from London Mining plc were charged with conspiring to make corrupt payments to secure preferential treatment in Sierra Leone. The individuals, including the company’s chief executive and chief financial officer, pleaded not guilty in October. The trial is now expected to begin in January 2025.
- In September, the SFO charged four individuals, including a former director and chief financial officer of Patisserie Holdings Plc (“Patisserie Holdings”), in connection with the collapse of the synonymous bakery chain. The charges relate to conspiracy to inflate the cash in Patisserie Holdings’ balance sheet and annual reports from 2015 to 2018, including by providing false documentation to the company’s auditors.

**“The SFO has continued its recent trend of being more active in the pursuit of fraud offences than bribery, with investigators bringing actions against a range of individuals and corporates for fraudulent activities.”**

**3. Closed Investigations**

The SFO announced the closure of several high-profile investigations in 2023, alongside the collapse of a significant case:

- The SFO closed investigations into two international mining companies, with no charges being brought in either case.
  - In August, the SFO concluded that there was insufficient admissible evidence to prosecute Kazakh mining company Eurasian Natural Resources Corporation (“ENRC”). The investigation into ENRC was first opened in April 2012 and is one of the longest-running cases in SFO history. The SFO investigated suspected bribes allegedly paid by the company and individuals connected with it, relating to valuable mining contracts in the Democratic Republic of Congo, but faced repeated legal action from ENRC on numerous issues such as document disclosure. Furthermore, in another blow to its reputation, the SFO has been ordered by the High Court to make a payment to ENRC (which has yet to be determined but is likely to be substantial) after a UK court found that it began its investigation on information improperly obtained from a lawyer representing ENRC, leading ENRC to incur losses for unnecessary work and fees and wasted management time.

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- Also in August, the SFO announced that it had formally closed an investigation into suspected corruption in the Republic of Guinea by global mining group, Rio Tinto plc, concluding that it would not be in the public interest to proceed with a prosecution. The investigation had been running for six years and involved the SFO cooperating with a range of international partners. Earlier in the year, Rio Tinto agreed to pay a \$15 million civil penalty to the U.S. Securities and Exchange Commission for related FCPA books and records violations, while the Australian authorities continue to investigate these allegations.
- In March, the SFO's prosecution of three former executives at G4S Care and Justice Services (UK) Ltd ("G4S"), linked to the corporate DPA secured in 2020, collapsed. The SFO concluded that it was no longer in the public interest for the prosecution to proceed and stated that it was unable to resolve urgent and outstanding disclosure issues, despite the trial having already been adjourned for a year due to these disclosure issues. This and the collapse of the trial against Serco executives in 2021 (which gave rise to a wide-ranging review into disclosure failures by the SFO) both mark examples of significant disclosure issues derailing major SFO prosecutions.

#### 4. New Investigations and Future Priorities

The changing of Director saw an uptick in SFO activity, with three new investigations launched in the latter part of 2023. However, no new bribery-related investigations were publicly announced last year.

In October, the SFO announced an investigation into funeral plan provider Safe Hands Plans Limited and its parent company. The SFO is investigating suspected fraud following the collapse of a funeral plan scheme, which allowed individuals to pre-pay for the cost of their own funerals.

In November, the SFO announced an investigation into collapsed law firm Axiom Ince, in relation to alleged misappropriation of £66 million in client funds. The firm was shut down by the UK Solicitors' Regulation Authority in October 2023 when it was on the verge of collapse. The SFO has searched nine sites and made seven arrests in connection with the allegations.

In December, the SFO announced an investigation into alleged fraud by AOG Technics Ltd. It also carried out a dawn raid on a private residence and made one arrest. The UK-headquartered aircraft parts supplier is suspected of selling aircraft parts certified using false documents. The SFO has stated that it is working closely with the U.S. Civil Aviation Authority regarding these issues.

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These investigations reflect the new Director's desire to use proactively the SFO's range of investigatory powers to improve results and gain convictions. While delivering a keynote speech in September at the Cambridge Symposium on Economic Crime, the SFO's Chief Capability Officer supported the enhancement of the agency's powers through the ECCT Act, noting that it enables investigators to produce better assessments more quickly, thereby improve the speed and accuracy of investigations. She also spoke about the ongoing importance for the SFO of international collaboration, highlighting the value of investing heavily in international relationships to learn from cross-border investigations and embed strong working relationships across jurisdictions and agencies.

As part of wider attempts to galvanise support for the SFO and expand the number of cases it tackles, Director Ephgrave intends to increase significantly the number of permanent staff at the agency. Speaking at a conference of the American Bar Association in London in October, the SFO's joint head of fraud, bribery, and corruption announced that the Director was looking to increase the number of permanent SFO staff by up to a third, including by hiring between 100 and 150 new investigators, prosecutors, analysts, and accountants. This is intended to bolster the SFO's capabilities and reduce its reliance on temporary workers, addressing past criticism of the SFO.

## **B. Financial Conduct Authority**

In 2023, the FCA imposed financial penalties against eight firms and individuals, totalling £52.8 million. This represents a significant drop from the 26 penalties imposed by the FCA in 2022 but is broadly consistent with the level of enforcement action seen in 2021 and 2020 (10 and 11 fines, respectively). The FCA paid particular attention to firms that failed to implement adequate anti-money laundering controls, representing half of the 2023 enforcement actions. Some of the most significant cases from the past year are discussed below.

### **1. Equifax Limited**

In October, the FCA fined consumer credit agency Equifax Limited ("Equifax") £11 million for failings related to a 2017 cybersecurity incident that affected the personal data of almost 14 million individuals in the UK. The FCA identified a series of failings in relation to both Equifax's data processing and its response to the cyberattack.

The FCA criticised the way that Equifax handled the risks inherent in outsourcing its data processing functions to its U.S. parent company and thereby failed to implement adequate systems and controls to ensure the security of UK consumer data. Further, Equifax failed promptly to identify and notify individuals whose personal data had been compromised and published several statements that gave an inaccurate impression of the number of consumers who were affected.

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## 2. Anti-Money Laundering Enforcement

In 2023, the FCA brought enforcement actions against four firms for failures relating to their anti-money laundering (“AML”) systems and controls. AML-related enforcement action included fining:

- Guaranty Trust Bank (UK) Ltd £7.6 million for widespread and serious weaknesses in its AML controls. Notably, this was the second time that the bank had faced FCA enforcement action, having been fined £525,000 in 2013 for similar issues.
- Al Rayan Bank plc, the UK’s largest Islamic bank, £4 million for failing to manage the risk that it might be used to facilitate money laundering by the higher risk customers that it was targeting. Amongst a number of issues, the FCA found that the bank failed to establish the source and wealth and source of funds of such customers at onboarding, handle cash deposits appropriately, and keep customer due diligence records up to date.
- Bastion Capital London Ltd £2.5 million for serious financial crime control failings, including failing to manage the risk that its cum-ex trading services would be used to facilitate fraudulent trading and money laundering.
- ADM Investor Services International Ltd, an investment brokerage firm, almost £6.5 million for significant inadequacies in the design and implementation of its AML procedures, including firm-wide AML risk assessments, client risk assessments and ongoing monitoring.

## II. Legislative Developments

### **Economic Crime and Corporate Transparency Act 2023**

In October, the long-awaited ECCT Act significantly bolstered the UK’s corporate crime framework. The Act, which was described as a “gamechanger” by the previous SFO Director, includes provisions to:

- **Expand the circumstances in which the wrongdoing of an individual can be attributed to a company**

For more than 50 years, companies have only been liable for offences committed by individuals who represent their “directing mind and will,” a legal test that has been interpreted in a restrictive way as comprising only the company’s most senior officers and executives, at or close to board level.

In a major reform to corporate liability, from December 27, 2023, the actions of a “senior manager” acting within the actual or apparent scope of their authority became attributable to their employer for a wide range of offences.

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These include bribery, money laundering, fraud, various sanctions offences, cheating the public revenue, and false accounting.

A “senior manager” is defined as any individual who plays a significant role in making decisions about, managing or organising the whole, or a substantial part, of the company’s activities. The focus will be on the substance of an individual’s role rather than their formal title and it will likely capture both senior individuals in business or operational roles (such as regional or department heads) and central supporting functions (such as finance, strategy or regulatory compliance).

This change is designed to prevent corporations from using complex management structures to shield themselves from liability and will significantly expand the number and range of people whose actions can be attributed to the company. It follows long-term calls from the SFO and widespread criticism that the narrow interpretation of the previous identification doctrine made it too difficult for the SFO to prosecute large companies.

“In October, the long-awaited [Economic Crime and Corporate Transparency Act] significantly bolstered the UK’s corporate crime framework. The Act ... was described as a ‘gamechanger’ by the previous SFO Director...”

- **Create a new corporate offence of failure to prevent fraud**

Corporate criminal liability will now arise where (i) an “associate” of a large organisation commits a specified fraud offence; and (ii) the associate intends to benefit either the organisation or a third party to which it is providing services; *unless* (iii) the organisation had implemented reasonable procedures to prevent fraud. In this context, “associate” is defined as any person who is an employee, agent, or subsidiary of the organisation, or any other person who performs services for or on its behalf.

This new offence is intended to make it easier for enforcement agencies to hold large organisations to account and will significantly widen the net for catching corporate fraud. Both UK and overseas companies may be subject to the offence, so long as the jurisdictional threshold for the underlying fraud offence is met, usually meaning that one of its elements must have occurred in the UK.

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These underlying fraud offences include: fraud by false representation or failing to disclose information under the Fraud Act 2006, false accounting and false statements by company directors under the Theft Act 1968, and the common law offence of cheating the public revenue.

For now, the offence will only apply to “large” organisations that meet two of the following three requirements: annual turnover over £36 million, a balance sheet total over £18 million, or more than 250 employees. This exemption for small and medium-sized businesses (“SMEs”) has been controversial, with critics noting that the vast majority of frauds committed against UK residents are perpetrated by organisations that would not qualify as “large.” However, the UK government decided that bringing SMEs within the scope of this offence would impose a disproportionate compliance burden.

The new offence will come into force following publication of government guidance in relation to what constitutes “reasonable procedures.” This is expected to be published in early 2024. Notably, and after much debate, the final version of the Act did not create an equivalent offence of failing to prevent money laundering.

- **Extend the SFO’s pre-investigation powers compelling parties to provide information**

Until the ECCT Act, the SFO could only compel parties to provide information and documents before opening a formal investigation in international bribery or corruption matters. This meant that in other types of cases, the SFO had to gather sufficient information from other sources to satisfy the statutory test for opening an investigation: “reasonable grounds” to suspect that a serious or complex fraud offence has been committed. From January 15, 2024, the pre-investigation compulsory power is available in all cases to enable the Director to determine whether to commence a formal investigation.

This is a significant expansion of the SFO’s investigatory powers and could have wide-ranging impacts. For example, the SFO can share information obtained in this way with other agencies (including foreign agencies), regardless of whether those agencies have equivalent pre-investigation powers. Notably, the change is expected to result in an increased number of formal investigations being opened by the SFO, since its enhanced ability to gather evidence at the pre-investigation stage should make it easier to meet the “reasonable grounds” test. However, there are also concerns that, if used in an unfocused manner, the use of pre-investigation information requirements could overwhelm SFO investigatory teams and exacerbate longstanding workload problems.

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## France

In 2023, France updated its guidelines on the use of French-style deferred prosecution agreements (“CJIP” or “*Convention Judiciaire d’Intérêt Public*”). French authorities also resolved seven corruption cases through CJIPs in 2023.

### I. Revised PNF Guidelines

On January 16, 2023, the French Financial National Prosecutor (the “PNF”) published revised guidelines on the use of the CJIP in cases of corruption, tax fraud, and influence peddling. The stated objective is to bring more transparency and predictability to the negotiation process, and to encourage companies to come forward, cooperate, and possibly identify individual wrongdoers.

The guidelines outline criteria considered by the PNF before offering and accepting a CJIP negotiation, which include self-disclosure to the PNF “within a reasonable timeframe”; willingness to conduct an active internal investigation to help identify misconduct, key involved individuals, and potential deficiencies in the company’s compliance program; voluntary establishment of an anti-corruption compliance program; swift implementation of corrective measures; changes to the management team, if needed; and compensation of victims.

A CJIP fine is composed of two elements: a *disgorgement* and a *penalty*. The guidelines list 17 factors (nine aggravating factors and eight mitigating factors) to be considered when calculating the *penalty*: each factor is associated with a maximum increase or reduction percentage to be applied to the *disgorgement* portion of the fine, as outlined below.

Aggravating Factors	Cap	Mitigating Factors	Cap
Obstruction of the investigation	30%	Voluntary self-disclosure	50%
Large company	20%	One-time occurrence	10%
Deficiencies of the compliance program (for companies subject to a mandatory program under Sapin II Law)	20%	Relevance of internal investigations	20%
Repetitive nature of the issues	50%	Active cooperation	30%
Judicial, fiscal, regulatory history	20%	Corrective measures	20%
Use of the company’s resources to conceal the alleged misconduct	20%	Efficiency of internal reporting system	10%
Creation of specific tools to conceal the alleged misconduct	30%	Non-equivocal admission of the facts	20%
Involvement of a public official	30%	Prior indemnification of victims	40%
Serious disruption of public order	50%		

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The PNF's guidelines indicate that it is ready to offer important potential reductions to the fine in the case of "voluntary self-disclosure" (50% reduction) and "active cooperation" (30% reduction). However, the PNF has offered little indication of what steps a company should take in order to qualify for the "active cooperation" reduction. Instead, the PNF simply reemphasized the importance of voluntary disclosure of potential wrongdoing. As the PNF recently put it: "We want to encourage companies to voluntarily self-disclose the facts they would have detected internally. This message was not so strong before. Here, we are clearly saying that there is a premium for self-disclosure...." It remains to be seen if this is enough to convince companies that voluntarily self-disclosing to French prosecutors is a sound decision.<sup>1</sup>

## II. CJIPs in 2023

Since 2016, 18 corruption cases have been concluded through CJIPs, of which seven were approved in 2023.<sup>2</sup> These seven corruption CJIPs covered a wide spectrum of situations: public and private corruption, French and foreign companies, French and foreign public officials, large and small companies, PNF and local prosecutors, large and small fines. That variety confirms the democratization of CJIPs in the French judicial landscape.

- **GDE.** In May 2023, French recycling company Guy Dauphin Environnement agreed to pay 1.23 million euros to settle charges of influence peddling. The investigation was triggered by French NGOs, further to allegations made in a French TV program. The facts included payment for dinners and helicopter flights provided to a French local official in exchange for his help in getting authorizations. The PNF took into account as mitigating factors the company's active cooperation during the investigation, its unequivocal acknowledgement of the facts, and the compensation made to the NGOs prior to the resolution. Aggravating factors included the company's judicial history (prior criminal convictions for fraud and health and safety offences), the involvement of a high-level public agent, and the serious disruption of public order. The company also agreed to a review of its anti-corruption compliance program, to be monitored by the French Anticorruption Agency ("AFA") for a three-year period.
- **Bouygues.** In May 2023, two French construction entities of French-listed group Bouygues agreed to pay 7.964 million euros to settle charges of corruption of public officials. The facts included the payment for dinners and concert tickets provided to the head of a local hospital in exchange for his help in winning public procurement contracts. The PNF took into account

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1. See Bruce E. Yannett, Alexandre Bisch, Erich O. Grosz, & Fanny Gauthier, "France's Revised Guidelines for Deferred Prosecution Agreements Promote Voluntary Self-Disclosure" (Feb. 13, 2023), <https://www.debevoise.com/insights/publications/2023/02/frances-revised-guidelines-for>.

2. In 2023, nine CJIPs were also approved in environmental crime cases, and one in a tax fraud case.

## France

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as mitigating factors the company's cooperation during the investigation and its unequivocal acknowledgement of the facts, as well as the implementation of corrective measures. Aggravating factors included the size of the company and the involvement of a public official. The company agreed to a review of its anti-corruption compliance program, to be monitored by the AFA for a three-year period.

- **Technip.** In June 2023, Technip UK and Technip Energies France agreed to pay a total of approximately 209 million euros to settle charges of corruption of foreign public officials in Ghana and Equatorial Guinea. In 2019, TechnipFMC plc had resolved related investigations with United States and Brazilian authorities. The PNF took into account as mitigating factors the companies' voluntary disclosure of certain facts, the relevance of their internal investigations, their active cooperation, and the implementation of corrective measures. The PNF also considered aggravating factors, including the systemic nature of the identified behaviors within the African region and the seriousness of the crime. The PNF also took into account the judicial history of the Technip group, which the CJIP says "was under investigation for acts of corruption committed in Nigeria when obtaining the contracts in question and concluded several negotiated settlements with foreign or international authorities."

**“The stated objective [of the revised guidelines] is to bring more transparency and predictability to the negotiation process, and to encourage companies to come forward, cooperate, and possibly identify individual wrongdoers.”**

- **Aciéries Hachette et Driout.** In October 2023, the French construction company Aciéries Hachette et Driout (“HCD”) agreed to pay 1.2 million euros to settle charges of private corruption. The facts included payments made by HCD's former CEO to the head of sales of its main client to secure contract renewals. The prosecutors' investigations started pursuant to a report from the French AML agency (*Tracfin*). Prosecutors took into account mitigating factors such as the time that had elapsed since the conduct at issue and the imputation of the conduct to the former CEO; the company's active cooperation; its unstable financial situation; and the improvement of its compliance program.

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## France

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- **ADPI.** In November 2023, French company Aéroports de Paris Ingénierie, a subsidiary of the French-listed airport operator ADP Group, agreed to pay 14.6 million euros to settle charges of corruption of foreign public officials in Libya and UAE. The facts included payments and “commitments” to public officials in connection with public procurement contracts. The PNF took into account as mitigating factors the company’s voluntary disclosure of certain facts, its cooperation during the investigation, the relevance of its internal investigations, and the implementation of corrective measures. Aggravating factors included the size of the group, the involvement of public officials, and the company’s regulatory history. Because the company’s compliance program was already being monitored by an Integrity Compliance Officer of the World Bank, the PNF agreed not to impose additional monitoring by the AFA.
- **SEVES.** In November 2023, the Luxembourg company SEVES Group SARL and the French company SEDIVER SAS agreed to pay a total of 13.373 million euros to settle charges of corruption of foreign public officials in DRC, Algeria, Libya, and Nigeria. The investigation started in 2017, following the communication of a report by SEDIVER’s statutory auditor to prosecutors regarding the company’s ongoing investigation by the World Bank. The facts included illegal payments to foreign public officials to secure contracts. The PNF considered as mitigating factors the company’s voluntary disclosure of certain facts, the company’s unequivocal acknowledgement of the facts, the relevance of the internal investigations, cooperation during the investigation, and compensation made to the DRC through payments to the World Bank. Prosecutors also took into account aggravating factors, including the systemic nature of the identified conduct and the involvement of a public official. The company agreed to a review of its anti-corruption compliance program, to be monitored by the AFA for a three-year period.
- **Omnium.** In November 2023, the French holding company Omnium and three of its subsidiaries agreed to pay a total of 1.7 million euros to settle charges of corruption of a public official. The facts included the provision of money, travel, and gifts to a French public official in exchange for his help in winning public procurement contracts. That corruption scheme was revealed during a separate international drug trafficking investigation. Prosecutors considered as mitigating factors the company’s cooperation during the proceedings, its unequivocal acknowledgement of the facts, and the implementation of corrective measures. Aggravating factors were also taken into account, including the involvement of public officials, the amount of the payments, and the creation of tools to conceal the misconduct (in this case, false receipts).

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## Germany

### I. Legislative Developments

#### **A. Corporate Criminal Liability**

Despite several legislative attempts, the existing administrative liability regime for corporate misconduct under the Administrative Offences Act (*Ordnungswidrigkeitengesetz*) is not expected to change substantially any time soon.

In contrast to previous coalition agreements, the government no longer committed in its 2021 agreement to introduce corporate criminal liability in a Corporate Sanctions Act. It also has not yet followed up on its plans for this legislative period to revise the current sanctions system, improve legal certainty with regard to compliance duties, or introduce a precise legal framework for internal investigations.

#### **B. Whistleblower Protection Act**

On July 2, 2023, the Whistleblower Protection Act (*Hinweisgeberschutzgesetz*, “WPA”) entered into force. The WPA implements the EU Whistleblower Directive (“Directive”) that protects reporting of certain work-related EU law violations in fields such as money laundering and cybersecurity. The WPA exceeds the minimum requirements of the Directive by further protecting the reporting of work-related German criminal law and certain administrative law violations.

The WPA protects individuals who disclose breaches of certain laws on the basis of information acquired in a work-related context. The protected persons include (broadly defined) employees, shareholders, and members of management, as well as contractors. There is, however, no protection if the information relates to national security, or is covered by legal or medical professional secrecy.

The WPA protects a whistleblower who reports either internally through employer reporting channels, externally to government authorities, or – in rare instances – through public disclosure. While being encouraged to use internal reporting, the whistleblower can choose freely among the reporting channels.

The internal or external reporting offices are bound to ensure the confidentiality of the identities of the reporting person, persons subject to the reporting, and persons otherwise affected by the whistleblowing. The identity of a bad faith whistleblower is not protected. Identities can be disclosed on request of an authority or for internal investigation purposes.

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Companies with more than 50 employees in Germany are now required to establish and maintain internal reporting channels and follow up on reports. However, for employers in the financial industry, including investment services firms, banks, and asset management companies, this requirement applies even if they have fewer than 50 employees.

Each employer must grant the internal reporting office the powers necessary to carry out its tasks, including staffing with independent and skilled persons.

The actual reporting may involve the following steps. The employer accepts the report via the channel it opened. The internal reporting office provides acknowledgment of receipt, maintains the communication with the reporting person, and takes follow-up measures such as conducting an internal investigation. The office gives the reporting person feedback within three months. If the employer receives an anonymous report, it must be processed. There is, however, no duty to design internal reporting channels to permit anonymous reporting.

The centralized external reporting office is the Federal Office of Justice (*Bundesamt der Justiz*). Further external reporting offices are, within their competence, the Federal Financial Supervisory Authority (*Bundesamt für Finanzdienstleistungsaufsicht*) and the Federal Cartel Office (*Bundeskartellamt*).

The whistleblower is protected under the WPA if he or she uses an appropriate reporting channel, has reasonable grounds to believe that the information was true, and has reasonable grounds to believe that the information was within the scope of the WPA. The protection extends to any form of retaliation, such as dismissal or disciplinary measures, including threats or attempted retaliation.

If the whistleblower alleges in proceedings that he or she suffered detrimental consequences after reporting, the person who took the alleged detrimental measure can rebut the presumption that the detriment resulted from retaliation for the report or disclosure. While the good faith whistleblower is entitled to pecuniary damages, liability attaches to a whistleblower who was grossly negligent or engaged in intentionally false reporting.

Violations of core WPA duties, such as hindering reporting, taking retaliatory measures, or not preserving the confidentiality of protected persons are sanctioned as administrative offences with fines of up to EUR 50,000, or in certain instances for corporations up to EUR 500,000.

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## II. Judicial Decisions

### A. Calculation of Administrative Sanctions

Sanctions under the Administrative Offences Act (*Ordnungswidrigkeitengesetz*) for business crimes or administrative offences committed by leading personnel can consist of either administrative fines or confiscation of profits.

Administrative fines consist of a (capped) penalty and an (uncapped) disgorgement of profits in order to seize the proceeds of the misconduct that exceed the penalty. Confiscation of profits, which due to its non-punitive nature technically represents a consequence rather than a sanction for an offence, is a further instrument aimed at disgorging the proceeds of the misconduct. It is within the court's discretion whether it uses disgorgement as an element of the fine or confiscation to seize profits. Following a change in the law of confiscation, the calculation method for disgorgement has now become unclear.

**“The [Whistleblower Protection Act] protects individuals who disclose breaches of certain laws on the basis of information acquired in a work-related context.... The whistleblower is protected under the WPA if he or she uses an appropriate reporting channel, has reasonable grounds to believe that the information was true, and has reasonable grounds to believe that the information was within the scope of the WPA.”**

In a corruption case of a managing director of a construction company for bribing a public official, the Federal Court of Justice (*Bundesgerichtshof*) (April 27, 2022, 5 StR 278/21) imposed an administrative fine on the company in order to disgorge profits as well. Prior to the sentencing, the company initiated a “self-cleansing process,” which included the introduction of a Compliance Management System and whistleblower protection.

The decision clarified two points:

**First**, the court confirmed a precedent (May 9, 2017, 1 StR 265/16) that the remediation post factum is an extra-statutory mitigating factor when calculating the penalty of an administrative fine.

**Second**, the calculation of disgorgement of profits follows the “net principle” and requires the court to deduct from the estimated (gross) profit resulting from the offence all connected costs and expenses incurred, including bribery payments,

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irrespective of their criminal nature. In contrast, the now revised calculation method for the confiscation value follows, in substance, the “gross principle” and does not permit the deduction of what was expended or used for the commission of the offence or its preparation such as a bribery payment, and thus considers the criminal nature of the payment. The court concluded that the change of the calculation method for confiscations does not affect the “net principle” for the disgorgement component of an administrative fine.

A court, when exercising its discretion whether to issue an administrative fine or order confiscation, has to keep the outcome of the different calculation methods in mind when determining which means is appropriate in the individual case.

**B. Use of Evidence Collected in Violation of Data Protection Laws**

In termination proceedings following internal investigations that uncovered misconduct warranting termination, employees have often used their fundamental right to data protection as a defense. Labor courts have given the right to data protection effect when declaring evidence collected in violation of the right generally inadmissible, irrespective of how small the infringement was.

The Federal Labor Court (*Bundesarbeitsgericht*) (June 29, 2023, 2 AZR 296/22) redefined the impact of data protection laws on the admissibility of evidence in termination proceedings in a case in which an employee challenged his termination for work time fraud.

In this case, the employer relied on video surveillance that caught the employee leaving the factory premises shortly after clocking in and before actually starting the shift. But the video footage was collected in violation of data protection laws because the notice regarding the video surveillance failed to include information about the storage of the footage. The employer also presented the clock-in logs as evidence of the employee’s misconduct, which were covered by a shop agreement (*Betriebsvereinbarung*) between the employer and the Works Council. The shop agreement contained, in line with German practice, a clause indicating that the clock-in logs must not be used in court.

The highest court in labor matters held that evidence collected in violation of data protection is not automatically inadmissible. Rather, the employee’s fundamental right to data protection has to be balanced with the employer’s fundamental right to a fair trial and the right to be heard with his evidence. Thus, a criminal employee can no longer invoke data protection rights to prevent the employer from submitting video surveillance evidence that is tainted by minor data protection violations. The decision further clarified that shop agreements cannot prevent a labor court from assessing evidence.

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## Asia

### I. China (Mainland)

In 2023, China continued to aggressively police corruption and bribery involving government officials, Communist Party cadres, SOE managers, and other public employees. The CCDI investigated 47 senior officials, up from 32 in 2022 and 25 in 2021. As in past years, the focus of China's anti-corruption crackdown has been on local (rather than multinational) companies, though enforcement authorities also investigated numerous companies that regularly serve as business counterparties to or partners with multinationals, including leading companies in the life insurance, asset management, brokerage, and pharmaceutical sectors. We expect the Chinese government to continue to focus on anti-corruption efforts in 2024, with a continued emphasis on the pharmaceutical, finance, infrastructure, and energy industries, as well as state-owned enterprises. Indeed, although President Xi Jinping announced earlier this year that the country had achieved an "overwhelming victory" in its battle against corruption, he went on to caution that the situation remained "grave" and there would be "absolutely no mercy" in rooting out corruption.<sup>1</sup>

#### **Legislative Developments: Amendments to Increase Penalties for Bribery**

On December 29, 2023, the Standing Committee of the National People's Congress ("NPC"), which is the permanent body that carries out the day-to-day affairs of the NPC, voted to adopt Amendment XII to the PRC Criminal Law.<sup>2</sup> The amendment, which will take effect on March 1<sup>st</sup>, increases the penalties for those who offer or pay bribes and those who solicit or accept them. It adds seven aggravating circumstances that could increase the punishment for individuals who offer or pay bribes to a state functionary:

- Repeated bribes or bribes to multiple state functionaries;
- Bribes by persons who have been state functionaries;
- Bribes in connection with projects of national importance;
- Bribes given in exchange for obtaining employment, promotion, or job transfer as a state functionary;
- Bribes to supervisors, administrative law-enforcing officers, and judicial officers;

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1. The State Council of PRC, "习近平在二十届中央纪委三次全会上发表重要讲话 (Xi Jinping Delivers an Important Speech at the Third Plenary Session of the 20th CCDI)," the State Council of PRC (Jan. 8, 2024), [https://www.gov.cn/yaowen/liebiao/202401/content\\_6924871.htm](https://www.gov.cn/yaowen/liebiao/202401/content_6924871.htm) (Chinese only).

2. See 《中华人民共和国刑法修正案(十二)》 (Amendments to the Criminal Law of the People's Republic of China (XII)), full text accessible at [http://www.npc.gov.cn/npc/c2/c30834/202312/t20231229\\_433988.html](http://www.npc.gov.cn/npc/c2/c30834/202312/t20231229_433988.html) (Chinese only).

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- Bribes in connection with other criminal activities in the fields of finance, ecology and the environment, workplace safety, food and medicine, disaster prevention and relief, social security, education, and medical care; or
- Bribes using illegally-obtained funds.

The amendment also increases the penalties for entities that bribe or accept bribes; these penalties include fines to be paid by the entity as well as criminal penalties for responsible individuals. Previously, if an entity (defined as any company, institution, organization, or group) bribed a state functionary, responsible individuals at the bribing entity faced up to five years in prison; the new amendment doubles the term of imprisonment to ten years. Previously, if a state functionary entity (defined as “state organs, state-owned enterprises, public institutions, and people’s organizations”) accepted a bribe, individuals directly in charge of the entity and those directly responsible for the offense could face imprisonment for up to five years. Now, individuals can be sentenced to up to 10 years in prison in “especially serious” circumstances.

### Enforcement Trends: Continued Crackdown on Corruption in Finance, Energy, and Healthcare

In 2023, Chinese enforcement authorities continued to focus on corruption in the financial sector. According to the CCDI,<sup>3</sup> over 90 officials from the financial sector were investigated in 2023, including high-ranking regulators and high-ranking managers at banks, insurance companies, and securities firms. Among them were eight senior Communist Party cadres, colloquially known as “tigers.” In October 2023, Liu Liange, the ex-chairman of the Bank of China, was arrested on corruption charges, including allegations of illegally granting loans and using his position in the bank to accept bribes.<sup>4</sup> The other seven “tigers” under investigation include former senior managers at China Everbright Group Corporation, China Development Bank, China Taiping Insurance Group, and Industrial and Commercial Bank of China.<sup>5</sup>

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3. See <https://www.ccdi.gov.cn/scdcn/> (list of individuals put under formal investigation) (visited Jan. 17, 2024) (Chinese only).
  4. See “最高人民法院依法对刘连舸决定逮捕 (Supreme People’s Procuratorate decides to arrest Liu Liange)” CCDI (Oct. 16, 2023), [https://www.ccdi.gov.cn/yaowenn/202310/t20231016\\_300284.html](https://www.ccdi.gov.cn/yaowenn/202310/t20231016_300284.html) (Chinese only).
  5. See “中国光大集团原党委书记、董事长李晓鹏严重违纪违法被开除党籍和公职 (Li Xiaopeng, former party secretary and chairman of China Everbright Group, has been expelled from the party and public office for serious disciplinary violations),” CCDI (Oct. 9, 2023), [https://www.ccdi.gov.cn/yaowenn/202310/t20231009\\_298789.html](https://www.ccdi.gov.cn/yaowenn/202310/t20231009_298789.html); “国家开发银行原党委委员、副行长周清玉严重违纪违法被开除党籍 (Zhou Qingyu, former party committee member and vice president of China Development Bank, was expelled from the party for serious disciplinary violations),” CCDI (Nov. 16, 2023), [https://www.ccdi.gov.cn/toutiao/202311/t20231116\\_307927.html](https://www.ccdi.gov.cn/toutiao/202311/t20231116_307927.html); “中国太平保险集团有限责任公司党委委员、副总经理肖星接受中央纪委国家监委纪律审查和监察调查 (Xiao Xing, member of the party committee and deputy general manager of China Taiping Insurance Group is under formal investigation),” CCDI (Jul. 18, 2023), [https://www.ccdi.gov.cn/scdcn/202307/t20230718\\_276345.html](https://www.ccdi.gov.cn/scdcn/202307/t20230718_276345.html); “中国工商银行原党委委员、副行长张红力接受中央纪委国家监委纪律审查和监察调查 (Zhang Hongli, former party committee member and vice president of Industrial and Commercial Bank of China undergoes formal investigation),” CCDI (Jul. 18, 2023), [https://www.ccdi.gov.cn/scdcn/zggb/zjsc/202311/t20231104\\_305122.html](https://www.ccdi.gov.cn/scdcn/zggb/zjsc/202311/t20231104_305122.html) (Chinese only).

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Chen Gongyan, former chairman of China Galaxy Securities (CGS), was also put under investigation.<sup>6</sup>

The energy industry was also a focus of anti-corruption enforcement in 2023. According to statistics from the CCDI, at least 58 officials in the energy field were investigated and prosecuted, including two “tigers” (Li Dong, the former leader of China Energy Investment Group,<sup>7</sup> and Xu Wenrong, the former leader of China National Petroleum Corporation).<sup>8</sup> On the first working day of 2024, the CCDI announced that Hu Guoqiang, Secretary of the Party Committee and Chairman of Xinjiang Energy (Group) Co., Ltd., was under investigation.<sup>9</sup>

“As in past years, the focus of China’s anti-corruption crackdown has been on local (rather than multinational) companies, though enforcement authorities also investigated numerous companies that regularly serve as business counterparties to or partners with multinationals....”

Notwithstanding the focus on the financial and energy sectors, the healthcare industry received a great deal of public scrutiny from anti-corruption regulators in 2023. The CCDI visited numerous public hospitals, pharmaceutical companies, medical insurance funds, and relevant government bureaus across China. According to the CCDI, as of December 2023, over 200 public hospital managers and government officials in the pharmaceutical sector had been placed under formal investigation, including 15 provincial-level officials. Among these individuals are leaders from provincial health commissions,<sup>10</sup> party secretaries, presidents of medical universities, provincial drug supervision administrations and medical insurance bureaus.<sup>11</sup>

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6. See “中国银河证券股份有限公司原党委书记、董事长陈共炎接受纪律审查和监察调查 (Chen Gongyan, Former Party Secretary and Chairman of China Galaxy Securities, undergoes formal investigation),” CCDI (Nov. 10, 2023), [https://www.ccdi.gov.cn/yaowenn/202311/t20231110\\_306760.html](https://www.ccdi.gov.cn/yaowenn/202311/t20231110_306760.html) (Chinese only).
7. See “检察机关依法对李东涉嫌受贿案提起公诉 (Procuratorate prosecutes Li Dong in bribery case),” CCDI (Dec. 1, 2023), [https://www.ccdi.gov.cn/yaowenn/202312/t20231201\\_311452.html](https://www.ccdi.gov.cn/yaowenn/202312/t20231201_311452.html) (Chinese only).
8. See “检察机关依法对徐文荣决定逮捕 (Procuratorate decides on Xu Wenrong’s arrest),” CCDI (Jan. 8, 2024), [https://www.ccdi.gov.cn/yaowenn/202401/t20240108\\_320488.html](https://www.ccdi.gov.cn/yaowenn/202401/t20240108_320488.html) (Chinese only).
9. See “新疆能源(集团)有限责任公司党委书记、董事长胡国强接受纪律审查和监察调查 (Xinjiang Energy Group Chairman Hu Guoqiang Under Formal Investigation),” CCDI (Jan. 2, 2024), [https://www.ccdi.gov.cn/scdcn/ssgb/zjsc/202401/t20240102\\_318990.html](https://www.ccdi.gov.cn/scdcn/ssgb/zjsc/202401/t20240102_318990.html) (Chinese only).
10. See “广东省卫生健康委党组书记、主任朱宏接受纪律审查和监察调查 (Zhu Hong, director of the Guangdong Provincial Health Commission, is under formal investigation),” CCDI (Nov. 11, 2023), [https://www.ccdi.gov.cn/yaowenn/202311/t20231110\\_306750.html](https://www.ccdi.gov.cn/yaowenn/202311/t20231110_306750.html) (Chinese only).
11. See “山东省药品监督管理局原副局长史国生接受纪律审查和监察调查 (Shi Guosheng, former deputy director of Shandong Provincial Drug Administration, under formal investigation),” CCDI (Sep. 14, 2023), [https://www.ccdi.gov.cn/scdcn/ssgb/zjsc/202309/t20230914\\_293636.html](https://www.ccdi.gov.cn/scdcn/ssgb/zjsc/202309/t20230914_293636.html); “新疆维吾尔自治区医疗保障局党组书记、副局长盛焉江接受纪律审查和监察调查 (Sheng Yanjiang of the Xinjiang Uygur Autonomous Region’s Medical Protection Bureau is under formal investigation),” CCDI (June. 30, 2023), [https://www.ccdi.gov.cn/yaowenn/202306/t20230630\\_272664.html](https://www.ccdi.gov.cn/yaowenn/202306/t20230630_272664.html) (Chinese only).



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Notably, renowned medical experts affiliated with top-tier hospitals, concurrently holding academic positions in research institutions, were also placed under formal investigation.<sup>12</sup> Simultaneously, major local pharmaceutical companies and their key executives, including four current and former managers of Shanghai Pharmaceuticals Group Co., Ltd., also are under formal investigation.<sup>13</sup>

**Potential Future Enforcement Trends**

In September 2023, the Central Anti-Corruption Coordination Group of Chinese Communist Party<sup>14</sup> announced that it had drafted a new five-year plan to guide anti-corruption efforts in China. Although the plan is not public, the CCDI published information about it and specifically referred to an ongoing (but non-exclusive) focus on the finance, pharmaceutical, sports, and higher education sectors as well as on state-owned enterprises generally. According to the five-year work plan, the anti-corruption work of the Party will be further expanded to the “primary level” (the most grassroots level of Party organization) with harsh punishments for misconduct, such as embezzlement, fraudulent possession or misappropriation of funds, and solicitation of bribes. The stated goal of the five-year plan is to stamp out “industrial, systemic and regional corruption.”<sup>15</sup>

As is evident from the new five-year plan, sports is becoming an area of increasing focus for anti-corruption authorities. The anti-corruption campaign in the sports sector, particularly in football (soccer), intensified in 2023.<sup>16</sup> On January 19, 2023, Liu Yi, the former secretary-general of the Chinese Football Association, along with

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12. See Wang Hang, “《一月以来已有7位院长落马！医疗领域严查新型腐败、隐性腐败》 (Seven Principals have fallen since January! Medical field to investigate new types of corruption and hidden corruption),” Sichuan CDI (Feb. 8, 2023), <https://www.scjc.gov.cn/scjc/syjdwx/2023/2/8/9ddeb91cd95f4bf2b10e38abf66f3dfa.shtml?eqid=bffbc8cd005cc6dc000000364681c02> (Chinese only).
  13. See “上海医药集团股份有限公司及下属公司四名干部接受纪律审查和监察调查 (Four cadres of Shanghai Pharmaceutical Group Corporation and its subsidiaries under formal investigation),” Shanghai CDI (Sep. 2, 2023), <https://www.shjjc.gov.cn/shsjjcw/ljsh/content/e264d80b-7c1b-44b2-b3ff-1ff24860abff.html> (Chinese only).
  14. Anti-Corruption Coordination Groups are organizations established under the leadership of the Party Committees at the provincial level. They involve the key leaders of the discipline inspection commissions and supervisory commissions at various levels. The group's mission is to enhance unified leadership and coordination in investigating and handling major and significant corruption cases. The Central Anti-Corruption Coordination Group performs the same function at the national level.
  15. The full text of the five-year plan is a confidential document, but CCDI published some information about it. See “F&Q of the Work Plan of the Central Anti-Corruption Coordination Group (2023-2027),” CCDI (Sep. 20, 2023), [https://www.ccdi.gov.cn/toutiaon/202309/t20230920\\_294909.html](https://www.ccdi.gov.cn/toutiaon/202309/t20230920_294909.html) (Chinese only).
  16. See “国家体育总局冬运中心党委书记、主任倪会忠接受审查调查 (Ni Huizhong, party secretary and director of the Winter Sports Center of the State General Administration of Sports, is under formal investigation),” CCDI (Aug. 26, 2023), [https://www.ccdi.gov.cn/yaowenn/202308/t20230826\\_288696.html](https://www.ccdi.gov.cn/yaowenn/202308/t20230826_288696.html); “中国田协主席于洪臣接受审查调查 (China Association of Athletics Federations Chairman Yu Hongchen under investigation),” the State General Administration of Sports (Mar. 29, 2023), <https://www.sport.gov.cn/n315/n20001395/c25382305/content.html>; “中国赛艇协会、中国皮划艇协会原主席刘爱杰接受审查调查 (Liu Aijie, former chairman of China Rowing Association and China Canoeing Association, under formal investigation),” CCDI (Apr. 4, 2023), [https://www.ccdi.gov.cn/yaowenn/202304/t20230404\\_256664.html](https://www.ccdi.gov.cn/yaowenn/202304/t20230404_256664.html) (Chinese only).

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Chen Yongliang, the former deputy secretary-general of the Chinese Football Association and director of the national team, were announced to be under formal investigation.<sup>17</sup> Subsequently, several former high and mid-level officials of the Chinese Football Association and individuals associated with football clubs have been put under formal investigation. Additionally, at least ten players and coaches were investigated or disciplined for “match-fixing” and “gambling” cases. And in October 2023, Du Zhaocai, the former deputy sports minister and vice chairman of the Chinese Football Association, was arrested on charges of bribery.<sup>18</sup> As further evidence of this focus on anti-corruption enforcement in sports, Chinese state television recently aired a documentary featuring revelations of “comprehensive” corruption in football, involving Chen Xuyuan, a former chairman of the Chinese Football Association, and Li Tie, a former head coach of the men’s national team.<sup>19</sup> Beyond football, high-profile figures in basketball, winter sports, athletics, and rowing also have faced formal investigation.

**Data Protection and Cross-Border Investigations**

In 2023, China implemented several new regulations focusing on data protection and cybersecurity, particularly addressing cross-border data transfer and personal information protection. With the aim of enhancing the environment for international business, China’s cybersecurity authorities are contemplating the relaxation of certain requirements for multinational and foreign companies. In September 2023, the Cybersecurity Administration of China (“CAC”), the country’s cybersecurity regulator, published the Regulations on Standardizing and Promoting Cross-Border Data Flows (Draft for Comment).<sup>20</sup> If approved, these draft regulations would significantly ease the conditions triggering security assessments, Standard Contractual Clauses, and security certifications for some foreign companies operating in China. It is unclear when these draft regulations will be finalized.

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17. See Chinanews, “中国足协: 坚决拥护纪检监察机关对刘奕、陈永亮调查 (CFA: resolutely support the discipline inspection and supervision organs on Liu Yi, Chen Yongliang investigation),” Chinanews (Jan. 19, 2023), <https://www.chinanews.com.cn/ty/2023/01-19/9939157.shtml> (Chinese only).
  18. See “最高人民法院依法对杜兆才决定逮捕 (Supreme People’s Procuratorate decides to arrest Du Zhaocai),” SPP (Oct. 10, 2023), [https://www.spp.gov.cn/qwfb/202310/t20231010\\_630062.shtml](https://www.spp.gov.cn/qwfb/202310/t20231010_630062.shtml) (Chinese only).
  19. See CCTV, “行贿300万元上位国足主帅 (Bribe 3 million RMB to become the national football coach),” XinhuaNet (Jan. 9, 2024), <http://www.news.cn/legal/20240109/9a152a333e4047cdb689fbc8dd3b9976/c.html> (Chinese only).
  20. See 《规范和促进数据跨境流动规定 (征求意见稿)》 (The Regulations on Standardizing and Promoting Cross-Border Data Flows (Draft for Comment)), full text available at [http://www.cac.gov.cn/2023-09/28/c\\_1697558914242877.htm](http://www.cac.gov.cn/2023-09/28/c_1697558914242877.htm) (Chinese only).

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While the draft regulations will ease compliance with data protection and data security rules for day-to-day business activities, they do not relieve companies of other obligations mandated by existing PRC data protection laws, including the necessity of obtaining consent in many situations or the prohibition on providing data to foreign judicial or regulatory authorities outside of official (MLAT-like) channels. While there has been some enforcement of rules relating to data transfer and a long line of companies still awaiting approval of security assessments, there has yet to be any public enforcement of the prohibition on providing evidence to foreign authorities.

## II. China (Hong Kong SAR)

Hong Kong has long been a jurisdiction with low levels of corruption. The city ranked 12th out of 180 territories and second in Asia in Transparency International's most recent Corruption Perceptions Index, and has always been in the top 20 territories since the launch of the Index in 1995.<sup>21</sup>

The Independent Commission Against Corruption (ICAC) in Hong Kong investigates both public and commercial bribery. As befits Hong Kong's CPI ranking, most of the complaints received by the ICAC, and the investigations that result therefrom, relate to private sector corruption. In the first nine months of 2023, a total of 1,553 corruption complaints (excluding election complaints) were received by the ICAC, indicating a 14% increase from 1,367 complaints received in the same period in the previous year. Approximately three-quarters of these complaints related to private sector bribery. In the same period, there were a total of 173 individuals being prosecuted for non-election corruption offenses.<sup>22</sup>

Enforcement actions in 2023 included operation "Fire Net" in January 2023, the ICAC's largest ever operation against building management bribery. This operation targeted a sophisticated corruption syndicate that had infiltrated building maintenance projects and manipulated property management companies and the tendering process involving 10 building maintenance projects for residential and commercial buildings worth over HKD500 million. Operation Fire Net resulted in the charging of 23 individuals in September 2023 for conspiracy to offer and accept bribes totaling over HKD6.5 million and other offenses.<sup>23</sup> In October 2023,

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21. Transparency International, "Our Work in: Hong Kong," <https://www.transparency.org/en/countries/hong-kong>; ICAC, "Corruption Perceptions Index," <https://www.icac.org.hk/en/intl-persp/ranking-and-research/corruption-perceptions-index/index.html>.
  22. Hong Kong Legislative Council Panel on Security, "The Chief Executive's 2023 Policy Address: Briefing by Commissioner – Independent Commission Against Corruption" (Nov. 2023) LC Paper No. CB(2)983/2023(04); ICAC, "Corruption Complaints," <https://www.icac.org.hk/en/rc/figures/complaints/index.html>; ICAC, "Prosecutions," <https://www.icac.org.hk/en/rc/figures/prosecutions/index.html>.
  23. ICAC Post, Issue 49, "Taking a Tough Stance on Corruption in Building Management" (Mar. 2023), [https://www.icac.org.hk/icac/post/issue49/en/sub\\_article\\_01.html](https://www.icac.org.hk/icac/post/issue49/en/sub_article_01.html); ICAC Press Release, "ICAC's operation 'Fire Net': 23 charged for alleged building maintenance corruption involving \$6.5m bribes and \$520m contracts" (Sept. 22, 2023), [https://www.icac.org.hk/en/press/index\\_id\\_1710.html](https://www.icac.org.hk/en/press/index_id_1710.html).

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the ICAC jointly conducted an investigation with the Hong Kong Securities and Futures Commission (SFC) and the Accounting and Financial Reporting Council into an alleged pump-and-dump scheme that involved two listed companies. The companies are alleged to have falsified corporate transactions amounting to HKD193 million. The persons arrested include a chairperson of one of the listed companies and three officers at two brokerage firms who were also suspected of having committed bribery offenses.<sup>24</sup>

“Corruption continued to be a major issue in Indian public discourse in 2023, becoming a talking point in advance of the upcoming national elections in 2024.”

### III. India

Corruption continued to be a major issue in Indian public discourse in 2023, becoming a talking point in advance of the upcoming national elections in 2024. In August 2023, Prime Minister Narendra Modi identified corruption as the “root of all problems” of the country, describing it as one of “three evils” along with dynastic politics and appeasement.<sup>25</sup> The opposition, meanwhile, focused on allegations relating to stock manipulation, made by U.S. short-seller Hindenberg Research (and others) against the Adani Group and its founder, Gautam Adani, India’s richest person.<sup>26</sup> While the Adani allegations resulted in a significant back and forth between the government and the opposition throughout the year,<sup>27</sup> an investigation was ordered by the Supreme Court of India in March 2023.

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24. SFC Enforcement News, “SFC and ICAC joint operation against sophisticated ramp-and-dump syndicate” (Nov. 10, 2022), <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=22PR94>; SFC Enforcement News, “Five more arrested in SFC and ICAC joint operation against sophisticated ramp-and-dump syndicate” (Mar. 15, 2023), <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=23PR19>; SFC Enforcement News, “SFC, ICAC and AFRC conduct first tripartite operation against suspected corporate fraud and misconduct” (Oct. 19, 2023), <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR120>.
  25. “Independence Day speech takeaways: PM Modi prescribes several mantras for future of country” (Aug. 15, 2023), <https://economictimes.indiatimes.com/news/india/independence-day-speech-takeaways-pm-modi-prescribes-several-mantras-for-future-of-country/articleshow/102748316.cms?from=mdr>.
  26. See “Adani Group, How the World’s 3rd Richest Man is Pulling the Largest Con in Corporate History” (Jan. 24, 2023), <https://hindenburesearch.com/adani/>; Shreegireesh Jalihal an Kumar Sambhav, “Modi govt allowed Adani coal deals it knew were ‘inappropriate’” Al Jazeera (Mar. 1, 2023), <https://www.aljazeera.com/economy/2023/3/1/modi-govt-allowed-adani-coal-deals-it-knew-were-inappropriate>; and Dan McCrum, Chris Cook, David Sheppard, and Max Harlow, “The Mystery of the Adani Coal Imports and Quietly Doubled in Value,” Financial Times (Oct. 12, 2023), <https://www.ft.com/content/7aadb3d7-4a03-44ba-a01e-8ddd8bce29ed>.
  27. “BJP raises corruption charges against Gandhi family after Rahul Gandhi attacks govt over Adani issue”, The Economic Times (Oct. 18, 2023), <https://economictimes.indiatimes.com/news/politics-and-nation/bjp-raises-corruption-charges-against-gandhi-family-after-rahul-gandhi-attacks-govt-over-adani-issue/articleshow/104525772.cms?from=mdr>.

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The Supreme Court instructed the Securities Exchange Board of India (SEBI) to investigate the allegations. In May 2023, SEBI announced it had “drawn a blank” in its investigation, and in January 2024, the Supreme Court rejected various appeals against SEBI’s investigation and instructed the regulator to complete its work “within three months.”<sup>28</sup>

Over the past year, the Indian Supreme Court has clarified the type of evidence required for a conviction related to the acceptance of a bribe by a public servant. In *Neeraj Duta v. State (N.C.T. of Delhi)*,<sup>29</sup> the Constitutional Bench of the Supreme Court clarified that circumstantial evidence could be used to prove the demand or acceptance of a bribe by a public servant under sections 7 (Offence relating to public servant being bribed) and 13 (Criminal Misconduct by a public servant) of the Prevention of Corruption Act of 1988. The case involved the question of whether the prosecution could prove a demand for a bribe where the person from whom the bribe was solicited died prior to trial and was therefore unable to provide direct evidence. The Supreme Court held that a court could still find beyond a reasonable doubt that there had been a demand for a bribe based on circumstantial evidence in the record. Thereafter, a divisional bench of the Supreme Court found that the testimony of an officer involved in the sting operation that he saw money changing hands was insufficient, without more, to prove beyond a reasonable doubt that a demand for a bribe had been made.<sup>30</sup>

India often appears as the location of corrupt activities in enforcement actions brought outside India. Indian authorities also investigate these allegations, although such investigations occur after a significant delay. In an example of the long tail of corruption investigations, in May 2023, the Central Bureau of Investigation (CBI) registered a first instance report (FIR) (i.e., commenced an investigation) against Rolls-Royce plc, BAE Systems, and arms dealer Sudhir Choudhrie. The FIR apparently relates to conduct disclosed as part of Rolls-Royce’s 2017 DPA with UK authorities.<sup>31</sup> These types of delays in corruption investigations are not limited to investigations involving multinational companies. In 2023, the Central Vigilance Commission

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28. See “Gautam Adani: India court declines new inquiry against billionaire,” BBC News (Jan. 3, 2024), <https://www.bbc.com/news/world-asia-india-67869919>; Diksha Madhok, “Indian billionaire Gautam Adani says ‘truth has prevailed’ after top court orders regulators to wrap up probe,” CNN (Jan. 3, 2024), <https://edition.cnn.com/2024/01/03/business/india-adani-hindenburg-court-probe-hnk-intl/index.html>.

29. *Neeraj Dutta v. State*, Criminal Appeal No. 1669 of 2009 (2023) 4 Supreme Court Cases 731, 2022 SCC OnLine SC 1724 (Dec. 15, 2022).

30. *Neeraj Dutta v. State*, Criminal Appeal 1669 of 2009 (Supreme Court of India, Mar. 17, 2023), <https://indiankanoon.org/doc/114779396/>.

31. See “CBI books Rolls Royce, BAE Systems for alleged corruption in Hawk aircraft deal” Hindustan Times (May 30, 2023), <https://www.hindustantimes.com/india-news/cbi-registers-case-against-arms-dealer-sudhir-choudhrie-rolls-royce-and-british-aerospace-systems-over-alleged-irregularities-in-hawk-jet-deal-101685387508962.html>; Krishn Kaushik, “India files graft case against BAE Systems, Rolls-Royce,” Reuters (May 30, 2023), <https://www.reuters.com/business/aerospace-defense/indias-investigation-agency-files-graft-case-against-bae-systems-rolls-royce-2023-05-29/>.

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reported that of the 6,841 still-pending corruption cases brought by the CBI, 313 had been pending trial for more than 20 years and another 2,039 for more than 10 years.<sup>32</sup>

#### IV. Japan

Japan ended 2023 with a scandal associated with political donations to the ruling Liberal Democratic Party. Lawmakers are accused of receiving kickbacks amounting to around USD 3.4 million and failing to report such funds as required by applicable Japanese law.<sup>33</sup> The scandal already has led to the resignations of four cabinet ministers<sup>34</sup> and the arrest of one member of the House of Representatives.<sup>35</sup>

#### V. Malaysia

In March 2023, Malaysia's former Prime Minister Muhyiddin Yassin was charged with various alleged crimes relating to corruption, abuse of power, and money laundering in connection with government projects during the pandemic. Among other wrongdoing, Yassin was accused of receiving approximately USD 50.2 million in bribes from three companies. Yassin pleaded not guilty to all charges and claimed the charges were politically motivated. In August 2023, a local court dropped the abuse of power charges as "vague, flawed, and unfounded," leaving the remaining charges pending. The attorney general filed an appeal.<sup>36</sup>

#### VI. South Korea

In March 2023, the head of South Korea's main opposition Democratic Party leader Lee Jae-myung was indicted on various corruption charges, including bribery, corruption, breach of trust, and conflicts of interest. The charges related to a real estate development scandal in Seongnam, a city where Lee previously had been the mayor. Lee also was accused of demanding or receiving USD 13.6 million bribes from local companies to fund the city's football club.<sup>37</sup> In September 2023, Lee appeared at his first trial at a court in Seoul, denying the charges and calling the

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32. See "More than 6,800 corruption cases probed by CBI pending trial in courts, 313 for over 20 years: CVC" (Aug. 21, 2023), <https://economictimes.indiatimes.com/news/india/more-than-6800-corruption-cases-probed-by-cbi-pending-trial-in-courts-313-for-over-20-years-cvc/articleshow/102903399.cms?from=mdr>.
  33. See "Prosecutors quiz Abe faction lawmakers over 'slush' fund deal," The Asahi Shimbun (Dec. 17, 2023), <https://www.asahi.com/ajw/articles/15086131>.
  34. See Kelly Ng, "Japan: Four cabinet ministers quit over fundraising scandal," BBC News (Dec. 14, 2023), <https://www.bbc.co.uk/news/world-asia-67712367>.
  35. See Kevin Buckland, "Japan prosecutors make first arrest in political funding scandal," Reuters (Jan. 7, 2024), <https://www.reuters.com/world/asia-pacific/japan-prosecutors-make-first-arrest-political-funding-scandal-media-2024-01-07/>.
  36. See Joseph Sipalan, "Malaysia court drops abuse of power charges against former PM Muhyiddin Yassin," South China Morning Post (Aug. 15, 2023), <https://www.scmp.com/week-asia/politics/article/3231136/malaysia-court-drops-abuse-power-charges-against-former-pm-muhyiddin-yassin>.
  37. See Hyonhee Shin, "South Korea indicts opposition leader Lee over property graft," Reuters (Mar. 22, 2023), <https://www.reuters.com/world/asia-pacific/south-korea-indicts-opposition-leader-lee-over-property-graft-2023-03-22/>.

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case politically motivated.<sup>38</sup> The trial is pending but has been delayed as Lee recovers from a January 2024 attempted assassination.<sup>39</sup>

### VII. Vietnam

Vietnam's long-running "Blast Furnace" anti-corruption campaign continued and intensified in 2023. The year began with the resignation of Vietnam's (largely ceremonial) president, Nguyen Xuan Phuc. Nguyen, who had formerly been Prime Minister, resigned to take political accountability for alleged wrongdoing of ex-ministers in connection with two scandals involving bribery related to COVID-19 relief.<sup>40</sup> In July 2023, a court in Hanoi sentenced 54 defendants to prison in connection with one of the scandals. Those convicted included businesspeople and former high-ranking officials at the ministries of foreign affairs, health, and public security. The convictions were for accepting kickbacks and engaging in other crimes associated with repatriation flights during the pandemic. Of those convicted, 25 were government officials who reportedly received bribes totaling USD 7.6 million.<sup>41</sup>

The real estate sector was a particular focus for Vietnamese authorities during the past year. In November 2023, Vietnam's Ministry of Public Security accused Truong My Lan, the chairwoman of real estate developer Van Thinh Pat Holdings Group, of embezzling approximately USD 12.53 billion from Saigon Commercial Bank, a private bank that she allegedly controlled. The total amount of allegedly improperly obtained funds is the equivalent of more than 3% of Vietnam's GDP.<sup>42</sup> Lan also was accused of bribing regulators at the State Bank of Vietnam up to USD 5.2 million in exchange for lax regulatory oversight. As part of the investigation, the Ministry of Public Security has recommended the prosecution of 85 people, including 24 government officials and individuals associated with the Van Thinh Pat Holdings Group and Saigon Commercial Bank. Vietnam's Communist Party also recommended investigations into another 23 officials, including 12 employees of Vietnam's Central Bank.<sup>43</sup>

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38. See "Lee attends first trial on corruption, bribery cases," The Korea Times (Oct. 6, 2023), [https://www.koreatimes.co.kr/www/nation/2023/12/113\\_360579.html](https://www.koreatimes.co.kr/www/nation/2023/12/113_360579.html).

39. See "Opposition leader unable to attend trial over health concerns after stabbing attack: lawyer" The Korea Herald (Jan 12, 2024), <https://www.koreaherald.com/view.php?ud=20240112000572>.

40. See Kara Brockmeyer, et al., "The Year 2022 in Review: Normalcy Returns as Regulatory Expectations Rise," FCPA Update, Vol. 14, No. 6 (Feb. 1, 2023), <https://www.debevoise.com/insights/publications/2023/01/fcpa-update-january-2023>.

41. See Nadeem Shad, "Vietnam jails 50 in mass bribery trial over Covid-19 flights," BBC News (July 28, 2023), <https://www.bbc.com/news/world-asia-66340808>.

42. See Zachary Abuza, "Vietnam's corruption, poor economic management will hinder its growth — as Truong My Lan scandal shows," South China Morning Post (Dec. 3, 2023), [https://www.scmp.com/week-asia/opinion/article/3243547/vietnams-corruption-poor-economic-management-will-hinder-its-growth-truong-my-lan-scandal-shows?campaign=3243547&module=perpetual\\_scroll\\_0&pgtype=article](https://www.scmp.com/week-asia/opinion/article/3243547/vietnams-corruption-poor-economic-management-will-hinder-its-growth-truong-my-lan-scandal-shows?campaign=3243547&module=perpetual_scroll_0&pgtype=article).

43. See David Hutt, "Vietnam reels from historic €11.4 billion corruption scandal," Deutsche Welle (Dec. 1, 2023), <https://www.dw.com/en/vietnam-reels-from-historic-114-billion-corruption-scandal/a-67606137?maca=en-rss-en-all-1573-xml-mrss>.

## Latin America

Latin America's anti-corruption landscape remains complex and varied. Some countries have made strides in implementing legal frameworks and strengthening institutions to combat corruption, but significant challenges persist. Indeed, Latin America saw less vigorous anti-corruption efforts in 2023, and the latest Capacity to Combat Corruption Index (the "CCC Index") reported falling scores for ten of the fifteen Latin American countries surveyed and, for the first time since 2020, a decline in the region's average score.<sup>1</sup>

Amidst the obstacles encountered in fighting corruption, certain progress is notable. Brazil, for example, continues to lead the region in anti-corruption enforcement, despite initial skepticism following the reelection of President Luis Inácio Lula da Silva. Argentina and Mexico saw new technological initiatives to facilitate anti-corruption compliance, and Chile's new Law No. 21,959 (or Economic Crimes Law) seeks to further combat corruption by significantly expanding the scope of criminal liability for economic crimes.

Recent and upcoming presidential elections also remain consequential. The newly elected president of Argentina, Javier Milei, has proposed a slew of political and economic reforms, and Guatemala's new president, Bernardo Arévalo, has vowed to make combatting extortion a top priority. El Salvador, Mexico, and Venezuela are set for presidential elections this year, with Mexico poised to elect its first female president. Ultimately, though, the region's effectiveness in combatting corruption will depend on important factors that include elected leaders committing to needed reforms, adequately resourcing enforcement authorities and respecting their independence, and supporting cross-border coordination and collaboration.

### I. Argentina

For Argentina, 2023 involved relative stagnation in anti-corruption enforcement.<sup>2</sup> Although Argentine authorities conducted some investigations into alleged corruption, often involving high-ranking government officials, the nation continues to lag behind the regional average for anti-corruption legal capacity. Argentina's score on the CCC Index increased only marginally last year and dropped from sixth to seventh among the Latin American countries surveyed.<sup>3</sup>

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1. "The 2023 Capacity to Combat Corruption Index," Control Risks (June 2023), at 21, [https://www.ascoa.org/sites/default/files/imce\\_files/CCC\\_2023\\_Report.pdf](https://www.ascoa.org/sites/default/files/imce_files/CCC_2023_Report.pdf).
  2. Gimena Sánchez-Garzoli, "Argentina: Jumping Into Unchartered Territory," WOLA Advocacy for Human Rights in the Americas (Dec. 8, 2023), <https://www.wola.org/analysis/argentina-jumping-into-unchartered-territory>; Susie Violet Ward, "Milei Backs Freedom And Property Rights In Argentina's Political Shift," Forbes (Dec. 12, 2023), <https://www.forbes.com/sites/digital-assets/2023/12/12/milei-backs-freedom-and-property-rights-in-argentinas-political-shift/?sh=601c997b1ccb>.
  3. "The 2023 Capacity to Combat Corruption Index," Control Risks (June 2023), at 21, [https://www.as-coa.org/CCC\\_2023\\_Report.pdf](https://www.as-coa.org/CCC_2023_Report.pdf).



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**A. Legal and Policy Developments**

The election in December of Milei – a right-wing libertarian economist who has vowed to challenge the political status quo and eliminate governmental corruption – may impact dramatically Argentina’s legislative and judicial functions.<sup>4</sup> Milei has appointed Mariano Cúneo Libarona as Minister of Justice and Alejandro Milek as the new head of the Anti-Corruption Office (the “OA”).

Last month, Milei proposed an omnibus bill with several proposed reforms to the criminal procedure code, including jury trials for federal crimes with sentences of more than five years, such as money laundering and corruption. Milei also ordered Cúneo Libarona to create a special prosecutor’s office for investigating the corruption of public officials.<sup>5</sup> In addition, Cúneo Libarona will be in charge of modifying the composition of the Council of Magistracy, an organ of the judicial branch that appoints judges. Several key vacancies need filling, including in the Supreme Court and the role of Attorney General, which has been vacant since the resignation of Alejandro Gils Carbó in 2017.<sup>6</sup>

Milei issued a sweeping Decree of Necessity and Urgency (the “DNU”) within days of his inauguration, declaring a financial and administrative “emergency” in Argentina. The DNU has given rise to accusations of corruption and conflicts of interest within the cabinet. Two Argentina-based NGOs, the Civil Association for Equality and Justice (*Asociación Civil por la Igualdad y la Justicia* or the “ACIJ”) and Poder Ciudadano, the Argentine Chapter of Transparency International, have questioned publicly Foreign Minister Diana Mondino’s involvement. According to Argentina’s Central Bank, Mondino and her brother, Guillermo Mondino, are majority shareholders of Roela Bank, an institution that stands to benefit directly from the DNU. Poder Ciudadano has called for Argentina’s OA to “assess the issue in depth and determine whether it represents a conflict of interest.”<sup>7</sup>

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4. Gimena Sánchez-Garzoli, “Argentina: Jumping Into Uncharted Territory,” WOLA Advocacy for Human Rights in the Americas (Dec. 8, 2023) <https://www.wola.org/analysis/argentina-jumping-into-unchartered-territory>; Susie Violet Ward, “Milei Backs Freedom And Property Rights In Argentina’s Political Shift,” *Forbes* (Dec. 12, 2023), <https://www.forbes.com/sites/digital-assets/2023/12/12/milei-backs-freedom-and-property-rights-in-argentin-political-shift/?sh=601c997b1ccb>.
5. “El Gobierno Anuncio La Creación de Una Fiscalía Especial Para Investigar La Corrupción de Funcionarios Públicos” [“The Government Announced the Creation of a Special Prosecutor’s Office to Investigate Corruption of Public Officials”], *Hoy* (Jan. 25, 2024), <https://diariohoy.net/politica/el-gobierno-anuncio-la-creacion-de-una-fiscalia-especial-para-investigar-la-corrupcion-de-funcionarios-publicos-249484>; “Cuneo Libarona Adelanto Que Se Propondra un NuevoCodigo Procesal Penal” [“Cuneo Libarona Announced That a New Criminal Procedure Code Will Be Proposed”], *Ambito* (Jan. 9, 2024), <https://www.ambito.com/politica/cuneo-libarona-adelanto-que-se-propondra-un-nuevo-codigo-procesal-penal-n5917574>.
6. Chase Harrison and Jon Orbach, “Explainer: Who’s Who in Javier Milei’s Cabinet?,” *AS/COA* (December 11, 2023), <https://www.as-coa.org/articles/explainer-whos-who-javier-mileis-cabinet>; Hernán Cappiello, “Mariano Cúneo Libarona ya definió su candidato a procurador, un trio de mujeres para la Corte y planea reformas legales” [“Mariano Cúneo Libarona has already defined his candidate for attorney, a trio of women for the Court and plans legal reforms”], *La Nación* (Nov. 20, 2023), <https://www.lanacion.com.ar/politica/cuneo-libarona-ya-definio-su-candidato-a-procurador-un-trio-de-mujeres-para-la-corte-y-planea-reformas-legales-nid20112023>.
7. Andrés Lerner, “Diana Mondino signed decree deregulating financial activities while owning a bank,” *Buenos Aires Herald*, (Dec. 26, 2023), <https://buenosairesherald.com/politics/diana-mondino-signed-decree-deregulating-financial-activities-while-owning-a-bank>.

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Shortly before Milei assumed the presidency, in October, the OA announced a new component for its Integrity and Transparency Registry for Businesses (*Registro de Integridad y Transparencia para Empresas y Entidades* or “RITE”), an online platform that promotes integrity by enabling companies to voluntarily share information about their compliance programs. The RITE’s Form for Associative Organizations and the Social Economy provides tools for organizations developing an integrity program, including for risk assessment, policies and procedures, training and communication, management commitment, compliance function, third-party due diligence, integrity channel management, and continuous improvement.<sup>8</sup>

“Although Argentine authorities conducted some investigations into alleged corruption, often involving high-ranking government officials, the nation continues to lag behind the regional average for anti-corruption legal capacity.”

In addition, the OA signed a collaboration agreement in November with Corredores Viales, a public company that is part of the Ministry of Public Works and charged with developing and maintaining the highways. The previous head of the OA, Verónica Gómez, highlighted that signing as “progress in the corruption prevention policies” of the OA and reflective of “the firm commitment of Corredores Viales to the sustainable integrity agenda.”<sup>9</sup>

## B. Enforcement Efforts

While Milei’s approach to anti-corruption remains to be seen, Argentina’s efforts in 2023 skewed toward high-ranking government officials:

- In October, Martín Insaurralde, a top Buenos Aires province official who previously served as mayor of Lomas de Zamora for 12 years and later became chief of staff for the governor of Buenos Aires, Axel Kicillof, resigned from his post after images of him on a luxury vacation with his girlfriend were widely

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8. “Puesta en común del formulario de RITE para Organizaciones Asociativas y de la Economía Social” [“Sharing of the RITE form for Associative and Social Economy Organizations”], Argentina Gobierno (Oct. 19, 2023), <https://www.argentina.gob.ar/noticias/puesta-en-comun-del-formulario-de-rite-para-organizaciones-asociativas-y-de-la-economia>.

9. “La OA y Corredores Viales firmaron un acuerdo de colaboración para la promoción del RITE” [“The OA and Corredores Viales signed a collaboration agreement for the promotion of the RITE”], Argentina Gobierno (Nov. 17, 2023), <https://www.argentina.gob.ar/noticias/la-oa-y-corredores-viales-firmaron-un-acuerdo-de-colaboracion-para-la-promocion-del-rite>.

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disseminated amidst the socioeconomic crisis in Argentina. An investigation has been opened for his numerous trips abroad, which may involve laundering.<sup>10</sup>

- Also in October, a Peronist leader, Julio “Chocolate” Rigau, was caught withdrawing money from an ATM with 48 different debit cards corresponding to workers in the Buenos Aires Legislature. The Justice Department examined Rigau’s cell phone records and subsequently issued arrest warrants for the 48 owners of the cards. Rigau refused to testify and is currently detained, accused of illicit association and participation in the alleged fraudulent scheme. His defense team has requested an annulment of the case.<sup>11</sup>
- In November, the Federal Chamber of Buenos Aires reopened the money laundering investigation of former Vice President Cristina Fernández de Kirchner in the long-running “K money route” case. Judge Sebastian Casanello had dismissed the charges against her earlier last year, concluding there was no evidence Fernández de Kirchner participated in the scheme. Asociación Civil Bases Republicanas, a nonprofit organization with ties to the center-right opposition party of former President Mauricio Macri, appealed the decision to drop Fernández from the case. Milei’s Minister of Justice, Mariano Cúneo Libarona, has signaled that the corruption case against Fernández de Kirchner will continue under the new administration.<sup>12</sup>

### C. Looking Ahead

The immediate fate of anti-corruption enforcement in Argentina likely will hinge on how Milei’s administration prioritizes this objective relative to pressing economic and regulatory reform. The judiciary appears intent on continuing to enforce corruption-related crimes, particularly against high-ranking officials such as Fernandez de Kirchner. However, with several key positions remaining vacant in the Supreme Court and the Attorney General’s office, the extent to which

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10. “Luxury trip scandal: Insaurralde leaves councilor race and faces charges,” Buenos Aires Herald (Oct. 2, 2023), <https://buenosairesherald.com/politics/insaurralde-drops-out-of-councilor-race-after-luxury-trip-scandal>; “Empresarios argentinos piden reaccionar ante la corrupción” [“Argentine businessmen ask to react to corruption”], Ultima Hora (Oct. 7, 2023), <https://www.ultimahora.com/empresarios-argentinos-piden-reaccionar-ante-la-corrupcion>.
  11. “Empresarios argentinos piden reaccionar ante la corrupción” [“Argentine businessmen ask to react to corruption”], Ultima Hora (Oct. 7, 2023), <https://www.ultimahora.com/empresarios-argentinos-piden-reaccionar-ante-la-corrupcion>; “Julio “Chocolate” Rigau se negó a declarar en el caso de las tarjetas de la corrupción” [“Julio “Chocolate” Rigau refused to testify in the corruption cards case”], Clarin (Nov. 11, 2023), [https://www.clarin.com/politica/julio-chocolate-rigau-nego-declarar-caso-tarjetas-corrupcion\\_0\\_wEcWn4vgMt.html](https://www.clarin.com/politica/julio-chocolate-rigau-nego-declarar-caso-tarjetas-corrupcion_0_wEcWn4vgMt.html); “Internaron de urgencia a Julio “Chocolate” Rigau por un pico de presión: sus abogados pidieron la prisión domiciliaria” [“Julio “Chocolate” Rigau was urgently hospitalized due to a spike in pressure: his lawyers requested house arrest”], La Plata (Dec. 22, 2023), <https://www.laplata1.com/2023-12-22/internaron-de-urgencia-a-julio-chocolate-rigau-por-un-pico-de-presion-sus-abogados-pidieron-la-prision-domiciliaria-99674>.
  12. Chase Harrison and Jon Orbach, “Explainer: Who’s Who in Javier Milei’s Cabinet?,” AS/COA (Dec. 11, 2023), <https://www.as-coa.org/articles/explainer-whos-who-javier-mileis-cabinet>; Daniel Politi, “Corruption case reopened against Argentina’s Vice President Fernández, adding to her legal woes,” AP News (Nov. 28, 2023), <https://apnews.com/article/argentina-cristina-fernandez-kirchner-db0ff8b0e514af431e4dca256d44a85d>.

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such enforcement will continue, let alone increase, may depend on who Milei and Justice Minister Cúneo Libarona select to fill these positions. Meanwhile, in a recent interview, Cúneo Libarona stated that the OA will not be initiating investigations into corruption or filing complaints, as that is the responsibility of prosecutors.<sup>13</sup>

## II. Brazil

Despite concerns expressed about Brazil's anti-corruption trajectory following the 2022 reelection of Lula da Silva as President, Brazil remains at the forefront of the fight against corruption in Latin America. Brazil's score on the 2023 CCC Index improved from 2022, and the nation moved from tenth to eighth place in the overall rankings of Latin American countries surveyed.<sup>14</sup> As Brazil enters its second decade with the Anti-Corruption Law (or Clean Company Act) – legislation that fostered heightened anti-corruption enforcement all across the region – the country seems relatively committed to its enforcement goals.

### A. Legal and Policy Developments

Brazil's Comptroller General of the Union ("CGU") launched three noteworthy anti-corruption tools last year. In April, CGU released an online calculator of fines for violating the Anti-Corruption Law. In August, the agency introduced an online portal, entitled "Monitoring of Integrity Programs in Leniency Agreements," which enables the public to monitor signatory companies' compliance with commitments made through their agreements. Finally, in December, CGU launched the "Pró-Ética" online portal, which facilitates access to information related to its "Empresa Pró-Ética" program incentivizing private sector entities to develop integrity measures.<sup>15</sup>

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13. Hernan Cappiello, "Entrevista Con El Ministro de Justicia: El Candidato a la Corte, Su Mirada Sobre la Corrupcion y Los Derechos Humanos" ["Interview with the Minister of Justice: the Candidate for the Court, His View on Corruption and Human Rights"], La Nacion (Dec. 16, 2023), <https://www.lanacion.com.ar/politica/entrevista-con-el-ministro-de-justicia-el-candidato-a-la-corte-su-mirada-sobre-la-corrupcion-y-los-nid16122023>.
  14. "The Capacity to Combat Corruption (CCC) Index: Assessing Latin America's Ability to Detect, Punish, and Prevent Corruption," Americas Society, Council of the Americas, and Control Risks (June 2023), at 4-6, [https://www.as-coa.org/sites/default/files/imce\\_files/CCC\\_2023\\_Report.pdf](https://www.as-coa.org/sites/default/files/imce_files/CCC_2023_Report.pdf).
  15. "CGU lança calculadora eletrônica para computar multa prevista na Lei Anticorrupção" ["CGU launches electronic calculator to calculate fines provided for in the Anti-Corruption Law"], Controladoria-Geral da União (Apr. 12, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/04/cgu-lanca-calculadora-eletronica-para-computar-multa-prevista-na-lei-anticorruptao>; "Sociedade já pode acompanhar o aperfeiçoamento dos programas de integridade em acordos de leniência" ["Society can now monitor the improvement of integrity programs in leniency agreements"], Controladoria-Geral da União (Aug. 1, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/08/sociedade-ja-pode-acompanhar-o-aperfeicoamento-dos-programas-de-integridade-em-acordos-de-leniencia>; "CGU Lança Painel Pró-Ética com principais informações relacionadas ao projeto" ["CGU launches Pro-Ethics Panel with main information related to the Project"], Controladoria-Geral da União (Dec. 7, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/cgu-lanca-painel-pro-etica-com-principais-informacoes-relacionadas-ao-projeto>.

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Additionally, in August, CGU invited public comments on two proposed regulations. One proposal addresses the aggravating and mitigating factors to be considered in calculating fines for violations of the Anti-Corruption Law. The other proposal would establish the Conduct Adjustment Term (*termo de ajustamento de conduta*, or the TAC) as alternative form of settlement with CGU. This type of settlement involves an enforceable agreement that includes a commitment to correct misconduct and typically provides for a fine in the event of noncompliance with the agreement.<sup>16</sup>

Although CGU has improved transparency and access to important anti-corruption information, certain previously concluded cases and leniency agreements are threatening or have begun to unravel. As discussed earlier this year, three political parties filed a lawsuit before Brazil's Federal Supreme Court ("STF") in March, calling for the suspension of all financial obligations resulting from certain leniency agreements relating to *Lava Jato* on grounds that Brazil's Public Prosecutor's Office ("MPF") lacked standing when it entered into those agreements. STF announced in July that the case will be heard on the merits, though no date has yet been set.<sup>17</sup>

In August, MPF agreed to readjust a 2017 leniency agreement signed with J&F Investimentos S.A. ("J&F"). The agency reduced J&F's fine from R\$ 10.3 billion (USD \$2.1 billion) to R\$ 3.5 billion (USD \$700 million) after the company claimed that MPF miscalculated the company's gross revenue, which served as the basis for the initial fine calculation. In September, however, the MPF overturned the reduction, and, in December, the Brazilian Supreme Court suspended the fine.<sup>18</sup> The Attorney General's Office (Advocacia Geral da União or "AGU") can appeal this suspension, but has yet to do so.

Significantly, in September, STF annulled all evidence obtained through the USD \$2.6 billion leniency agreement entered into by Odebrecht, now renamed Novonor, in 2016. Justice Dias Toffoli, who authored the opinion, found that judges and public prosecutors unlawfully collaborated on the case, rendering the evidence

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16. "CGU Abre Consulta Pública Para Normativos da Secretaria de Integridade Privada" ["CGU Opens Public Consultation for Regulations from the Private Integrity Secretariat"], Controladoria-Geral da União (Aug. 1, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/08/cgu-abre-consulta-publica-para-normativos-da-secretaria-de-integridade-privada>.
  17. Andrew M. Levine, Matthew S. French, et al. "Latin America: Combatting Corruption Amidst Constant Change," FCPA Update, Vol. 14, No. 12 (Jul. 2023), at 5-6, <https://www.debevoise.com/-/media/files/insights/publications/2023/07/fcpa-update-july-2023.pdf?rev=a20f46c001484fc2bb667441a724536f&hash=78FD935F057C657151F18BF29C67DC8D>; Lucas Mathias, "Ação no STF pode suspender acordos de leniência com impacto de R\$ 30 bi" ["Action in the STF may suspend leniency agreements with an impact of R\$ 30 billion"], *Veja* (Sept. 9, 2023), <https://veja.abril.com.br/brasil/acao-no-stf-pode-suspender-acordos-de-leniencia-com-impacto-de-r-30-bi/mobile>.
  18. "Brazil Supreme Court Suspends \$2 Billion Fine on JBS Owner," *Reuters* (Dec. 20, 2023), <https://www.reuters.com/world/americas/brazil-supreme-court-suspends-2-billion-fine-jbs-owner-2023-12-20>; Press Release, "Câmara do MPF divulga nota sobre acordo de leniência firmado entre a instituição e a J&F" [MPF Chamber divulges press release regarding leniency agreement entered into with J&F], (Aug. 18, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/cgu-e-agu-assinam-acordo-de-leniencia-pela-primeira-vez-com-empresa-de-pequeno-porte>.

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“unusable in any Brazilian jurisdiction.”<sup>19</sup> Later that month, Novonor published a statement requesting STF nevertheless to uphold the agreement.<sup>20</sup> Just last month, however, Novonor asked Justice Toffoli to suspend the leniency agreement payments and requested access to documents from the *Lava Jato* investigation.<sup>21</sup>

National government agencies also have made significant efforts to improve cooperation and collaboration in the fight against corruption:

- In June, CGU and Brazil’s Public Ethics Commission entered into a Technical Cooperation Agreement (“TCA”) to facilitate information sharing regarding potential conflicts of interest among public employees.<sup>22</sup>

“Despite concerns expressed about Brazil’s anti-corruption trajectory following the 2022 reelection of Lula da Silva as President, Brazil remains at the forefront of the fight against corruption in Latin America.”

- In August, CGU agreed to assist the National Bank for Economic and Social Development in developing anti-corruption and integrity compliance requirements applicable to all companies with over R\$ 300 million (USD \$60 million) in yearly revenue wishing to receive credit. CGU also entered into a TCA with the Ministry of Human Rights and Citizenship to promote integrity and human rights in companies.<sup>23</sup>

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19. Supremo Tribunal Federal, Decisão, Reclamação 43.007 Distrito Federal (Sept. 6, 2023), at 132, <https://static.poder360.com.br/2023/09/integra-decisao-toffoli-impeachment-dilma.pdf>.
  20. Reclamação No. 43.007, Novonor S.A. (Sept. 6, 2023), [https://files.lbr.cloud/public/2023-09/Novonor%20-%20manifesta%C3%A7%C3%A3o%20RCL%2043007%20-%20v.%2026.09%20-%20vf.pdf?VersionId=8gSif\\_BjYgBgmMwGx6A.\\_SmdYZlhzvpp](https://files.lbr.cloud/public/2023-09/Novonor%20-%20manifesta%C3%A7%C3%A3o%20RCL%2043007%20-%20v.%2026.09%20-%20vf.pdf?VersionId=8gSif_BjYgBgmMwGx6A._SmdYZlhzvpp).
  21. Odebrecht Segue J&F e também pede a Toffoli suspensão da multa de R\$ 6 bi” [“Odebrecht Follows J&F and Also Asks Toffoli to Suspend the R\$6 Billion Fine”], *Correio Braziliense* (Jan. 13, 2024), <https://www.correiobraziliense.com.br/politica/2024/01/6786278-odebrecht-segue-j-f-e-tambem-pede-a-toffoli-suspensao-da-multa-de-rs-6-bi.html>.
  22. “Controladoria assina acordo de cooperação com a Comissão de Ética Pública” [“Comptroller signs cooperation agreement with the Public Ethics Commission”], *Controladoria-Geral da União* (June 2, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/06/controladoria-assina-acordo-de-cooperacao-com-a-comissao-de-etica-publica>.
  23. “CGU celebra parceria com o BNDES para promover integridade no setor privado” [“CGU celebrates partnership with BNDES to promote integrity in the private sector”], *Controladoria-Geral da União* (Aug. 3, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/08/cgu-celebra-parceria-com-o-bndes-para-promover-integridade-no-setor-privado>; MDHC e CGU assinam acordo de cooperação para promover a integridade e os direitos humanos nas empresas” [“MDHC and CGU sign cooperation agreement to promote integrity and human rights in companies”], *Ministério dos Direitos Humanos e Cidadania* (Aug. 1, 2023), [https://www.gov.br/mdh/pt-br/assuntos/noticias/2023/agosto/mdhc-e-cgu-assinam-acordo-de-cooperacao-para-promover-a-integridade-e-os-direitos-humanos-nas-empresas#:~:text=O%20Minist%C3%A9rio%20dos%20Direitos%20Humanos,%2C%20em%20Bras%C3%ADlia%20\(DF\)](https://www.gov.br/mdh/pt-br/assuntos/noticias/2023/agosto/mdhc-e-cgu-assinam-acordo-de-cooperacao-para-promover-a-integridade-e-os-direitos-humanos-nas-empresas#:~:text=O%20Minist%C3%A9rio%20dos%20Direitos%20Humanos,%2C%20em%20Bras%C3%ADlia%20(DF)).

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- In November, CGU and the Administrative Council Economic Defense entered into a TCA to increase coherence and collaboration in investigations where their mandates overlap, particularly in those involving corruption and cartels.<sup>24</sup>
- And in December, CGU and the Federal Police signed a joint ordinance establishing a formal partnership focused on coordinating and streamlining corruption and money laundering investigations.<sup>25</sup>

Brazil's fight against corruption was recently evaluated by the Organization for Economic Cooperation and Development (the "OECD"). In October, the OECD published its Phase 4 Review of Brazil, as we discussed in December. Brazil was praised for increasing awareness of foreign bribery, enforcement agencies' sophisticated use of the leniency agreement framework, and streamlining of foreign bribery detection efforts. On the other hand, Brazil was criticized for nebulous self-reporting initiatives and incentives, inadequate whistleblower protection in the private sector, challenges related to the statute of limitations, and perceived bias in relevant Brazilian government institutions.<sup>26</sup>

Finally, CGU has hinted at ways that its focus may shift in 2024 and beyond. In December, the agency announced plans to integrate Environmental, Social, and Governance goals into its anti-corruption agenda. The agency also has committed to expanding its global influence and increasing its cooperation with international counterparts, following Brazil's ascension to the G20 presidency and the co-presidency of the G20 Anti-Corruption Working Group in December.<sup>27</sup> Also in December, the Conference of States Parties to the United Nations Convention against Corruption approved a resolution presented by the Brazilian

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24. "Parceria entre CGU e Cade promete agilizar investigações contra empresas que atuam em cartéis" ["Partnership between CGU and Cade promises to speed up investigations against companies that operate in cartels"], Controladoria-Geral da União (Nov. 10, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/11/parceria-entre-cgu-e-cade-promete-agilizar-investigacoes-contra-empresas-que-atuam-em-carteis>.
  25. "CGU e Polícia Federal firmam acordo para combate a crimes de corrupção e desvio de recursos públicos" ["CGU and Federal Police sign agreement to combat crimes of corruption and embezzlement of public resources"], Controladoria-Geral da União (Dec. 7, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/cgu-e-policia-federal-firmam-acordo-para-combate-a-crimes-de-corrupcao-e-desvio-de-recursos-publicos>.
  26. Kara Brockmeyer, Andrew M. Levine, *et al.*, "OECD Issues Latest Assessment of Brazil's Foreign Anti-Bribery Enforcement," FCPA Update, Vol. 14, No. 5 (Dec. 2023), <https://www.debevoise.com/-/media/files/insights/publications/2023/12/fcpa-update-december-2023.pdf>; "Phase 4 Report on Implementing the OECD Anti-Bribery Convention in Brazil," OECD (Oct. 19, 2023), <https://www.oecd.org/corruption/anti-bribery/brazil-phase-4-report.pdf>.
  27. Andrew M. Levine, Matthew S. French, *et al.*, "Latin America: Combatting Corruption Amidst Constant Change," FCPA Update, Vol. 14, No. 12 (Jul. 2023), at 5, <https://www.debevoise.com/-/media/files/insights/publications/2023/07/fcpa-update-july-2023.pdf?rev=a20f46c001484fc2bb667441a724536f&hash=78FD935F057C657151F18BF29C67DC8D>; "Brasil anuncia em reunião da OCDE que irá presidir o Grupo Anticorrupção do G20 durante o ano de 2024" ["Brazil announces in OECD Meeting that it will hold the presidency of the G20 Anticorruption Group during 2024"], Controladoria-Geral da União (Nov. 8, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/10/brasil-anuncia-em-reuniao-da-ocde-que-ira-presidir-o-grupo-anticorrupcao-do-g20-durante-o-ano-de-2024>; "COSP: Brasil anuncia as prioridades do país enquanto presidente do Grupo de Trabalho Anticorrupção do G20" ["COSP: Brazil announces the country's priorities as president of the G20 Anti-Corruption Working Group"], Controladoria-Geral da União (Dec. 13, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/cosp-brasil-anuncia-as-prioridades-do-pais-enquanto-presidente-do-grupo-de-trabalho-anticorrupcao-do-g20>.

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delegation, coordinated by CGU, concerning “incentives for the private sector to adopt integrity measures and combat corruption.”<sup>28</sup>

Finally, also in December, President Lula da Silva signed bill No. 3,626/2023, approving a new regulatory framework for sports betting and online games. Among other things, the new law demands that operators offering fixed-odds betting show they have policies and internal controls in place to prevent money laundering, terrorism financing, and match-fixing or corruption.<sup>29</sup>

## B. Enforcement Efforts

Although CGU concluded more leniency agreements in 2022 than 2023, the agency nevertheless saw enforcement proceedings rise in 2023. On December 1, CGU announced that, by November, it had launched 63 administrative liability proceedings (“PARs”) against companies for breaches of the Anti-Corruption Law. This surpasses 2022 (60 PARs) and greatly exceeds 2021 (14 PARs) and 2020 (7 PARs). Moreover, CGU has entered into 25 summary judgement resolutions, resulting in R\$ 35.5 million in corporate fines (USD \$7.3 million), surpassing 2022’s eight summary judgments.<sup>30</sup>

The CGU and the Attorney General’s Office (Advocacia Geral da União or “AGU”) currently have 20 leniency negotiations underway and have reached two leniency agreements in December:

- **First**, an agreement was concluded with Neoway Tecnologia Integrada to settle investigations related to bid rigging and bribery in Santa Catarina state. The company agreed to improve its compliance program and to pay a sanction of R\$ 27.2 million (USD \$5.5 million) for breaches of the Anti-Corruption Law. CGU allowed Neoway to credit an R\$ 22,462.760.99 (USD \$4.6 million) penalty paid to MPF and Santa Catarina’s Office of the Comptroller General.<sup>31</sup>
- **Second**, CGU and AGU entered into a first-of-its-kind settlement with a small business, through which the company, Luvizoto Maquinas EIRELI-ME, agreed to pay R\$ 196,000 (USD \$40,000) and to develop a compliance framework.

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28. “Conferência Internacional aprova resolução brasileira por Integridade no Setor Privado” [“International Conference approves Brazilian resolution for Private Sector Integrity”], Controladoria-Geral da União (Dec. 18, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/conferencia-internacional-aprova-resolucao-brasileira-por-integridade-no-setor-privado>.
29. Lei Nº 14.790, de 29 de Dezembro de 2023” [“Law n.14,790 of December 29, 2023”], [https://www.planalto.gov.br/ccivil\\_03/\\_Ato2023-2026/2023/Lei/L14790.htm](https://www.planalto.gov.br/ccivil_03/_Ato2023-2026/2023/Lei/L14790.htm).
30. Eight leniency agreements were entered into by the CGU and AGU in 2022. See Andrew M. Levine, et al., “The Year 2022 in Review: Normalcy Returns as Regulatory Expectations Rise.” FCPA Update, Vol. 14. No. 6, at 59-60, <https://www.debevoise.com/-/media/files/insights/publications/2023/01/fcpa-update-january-2023.pdf?rev=d6d5615525ec4a3391ce2b5b95749f49&hash=86989DBEFEE910228A89EFC099F10187>; Press Release, “CGU atinge recorde de processos contra empresas punidas pela Lei Anticorrupção” [CGU reaches record in proceedings against companies sanctioned by the Clean Companies Act] (Dec. 1, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/cgu-atinge-recorde-de-processos-contra-empresas-punidas-pela-lei-anticorruptao>.
31. Press Release, “CGU e AGU assinam acordo de leniência com Neoway Tecnologia Integrada,” [CGU and AGU celebrate leniency agreement with Neoway Tecnologia Integrada”] (Dec. 5, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/cgu-e-agu-assinam-acordo-de-leniencia-com-neoway-tecnologia-integrada>.



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According to Marcelo Pontes Vianna, Secretary of Private Integrity with the CGU, this resolution reaffirms the government's commitment to combatting corruption at all levels.<sup>32</sup>

Additionally, MPF's 5th Chamber, which focuses on anti-corruption efforts, approved three leniency agreements in 2023:

- In April, the 5th Chamber ratified a resolution, still under seal originating from MPF's local Pernambuco state office.<sup>33</sup>
- In October, an agreement entered into by MPF's local Paraná state office was approved, though no further information is available as this matter also is under seal.<sup>34</sup>

“Compared to enforcement seen during the *Lava Jato* era, investigations and cases appear to be smaller and more local, but we still can expect the multiplicity of Brazilian regulators to continue to combat corruption aggressively.”

- In December, the 5th Chapter approved a leniency agreement with UOP LLC (currently Honeywell UOP), part of a coordinated resolution with Brazilian and U.S. authorities that MPF, CGU and AGU had entered into in December 2022. The agreement settled bribery investigations and required the company to pay R\$ 638 million (USD \$120.9 million), R\$ 456.3 million of which will be allocated to Petrobras, and to enhance Honeywell UOP's compliance program.<sup>35</sup>

Furthermore, last January, Americanas, a Brazilian retail store, filed for bankruptcy after disclosing accounting inconsistencies totaling R\$ 20 billion (USD \$4.18 billion). During a congressional hearing held on August 15, the lead prosecutor announced that MPF is investigating alleged insider trading, accounting fraud, market manipulation,

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32. Press Release, “CGU e AGU assinam acordo de leniência pela primeira vez com empresa de pequeno porte,” [CGU and AGU celebrate leniency agreement with a small-sized business for the first time”] (Dec. 21, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/12/cgu-e-agu-assinam-acordo-de-leniencia-pela-primeira-vez-com-empresa-de-pequeno-porte>.

33. “Acordos Homologados pela 5a CCR” [Leniency Agreements Ratified by the 5th Chamber], [https://apps.mpf.mp.br/apps/f?p=131:8:932164880135:::P8\\_ANO:2023](https://apps.mpf.mp.br/apps/f?p=131:8:932164880135:::P8_ANO:2023).

34. *Id.*

35. Press Release, “Câmara de Combate à Corrupção do MPF homologa acordo de leniência da empresa UOP LLC” [MPF's 5th Chamber approves UOP LLC's leniency agreement] (Dec. 18, 2023), <https://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/camara-de-combate-a-corrupcao-do-mpf-homologa-acordo-de-leniencia-da-empresa-uop-llc>.

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and criminal association stemming from these irregularities. Brazil's Securities and Exchange Commission also has initiated parallel legal proceedings.<sup>36</sup>

In May, São Paulo's Office of the Comptroller General entered into a first-of-its-kind foreign bribery settlement with the local subsidiary of Medartis, a Swiss medical device company, making it the first municipal-level Brazilian governmental body to enter into a leniency agreement. The subsidiary allegedly bribed doctors of public hospitals to purchase company products. The company agreed to pay over R\$ 10 million (USD \$2.09 million) to settle breaches of the Anti-Corruption Law.<sup>37</sup>

In September, CGU imposed a R\$ 73.1 million fine (USD \$15 million) on Tuttopharma, a Miami-based company, for a fraudulent bid related to a medication supply contract with the Ministry of Health. The company was also debarred.<sup>38</sup>

In November, MPF indicted Acre state's governor and twelve other individuals for bribery, bid rigging, money laundering, and racketeering dating back to 2019. According to the investigation, a construction company paid bribes to Acre's governor in order to fraudulently win contracts with the state through the waiver of bid proceedings, resulting in at least R\$ 11.7 million (USD \$2.4 million) in damages to public coffers.<sup>39</sup>

### C. Looking Ahead

Notwithstanding the criticisms and challenges, there is still more anti-corruption enforcement in Brazil than anywhere else in the region. Compared to enforcement seen during the *Lava Jato* era, investigations and cases appear to be smaller and more local, but we still can expect the multiplicity of Brazilian regulators to continue to combat corruption aggressively. Brazil also remains at the forefront of international cooperation with corruption-related investigations in Latin America, though the recent Odebrecht annulment suggests that prosecutors may choose to err on the side of caution when gathering such evidence.

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## Latin America

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**III. Mexico**

Outgoing President Andrés Manuel López Obrador and his administration largely fell short of his ambitious campaign platform to bolster Mexico's fight against corruption. Mexico's score on the CCC Index was the fourth lowest in the region in 2023, and Mexican anti-corruption enforcement, especially against corporations, remains more limited, notwithstanding recent efforts of the Specialized Prosecutor's Office for Combatting Corruption.

**A. Legal and Policy Developments**

In October, Dr. Estela Fuentes Jiménez, President of the Administrative Justice Court of Mexico City and Roberto Moreno Herrera, Technical Secretary of the Executive Secretariat of the National Anti-Corruption System (the "SNA"), cosigned a framework agreement for collaboration between the two organizations. This agreement provides for the development of a National Digital Platform that seeks to make public data accessible to help combat corruption.<sup>40</sup> Herrera had signed a similar collaboration agreement with the Pan American Development Foundation to develop anti-corruption policies that focus on human rights in February.<sup>41</sup> Relatedly, Mexico's SNA implemented in May an Anti-Corruption Learning Platform with training tools for both the public and private sectors.<sup>42</sup>

Additionally, lawyers at a Mexico City nonprofit focused on anti-corruption, Tojil, are working to change how, under the law, government departments rather than citizens typically are recognized as victims in corruption cases.<sup>43</sup> Tojil aims to persuade the Mexican Supreme Court to recognize Mexican *society* as the victim of government corruption so that individuals can collaborate with public prosecutors on corruption investigations. A recent ruling determined that physical persons cannot be named the victim of corruption, but Tojil plans to use comparative case law to support the proposition that they should be.

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**B. Enforcement Efforts**

Notwithstanding efforts to strengthen anti-corruption measures in Mexico, enforcement remained relatively sparse in 2023. At the 2023 edition of the Latin Lawyer and GIR Live: Anti-Corruption & Investigations Mexico conference in June, María Elisa Vera Madrigal, a director general at the Specialized Prosecutor's Office for Combatting Corruption, a branch of the Attorney General's Office (the "FGR"), noted the office's growing team of 60 prosecutors who handle approximately 800 investigations per year and, to date, have secured seven convictions, including three guilty pleas. Despite the office's growth since its 2019 founding, however, Vera Madrigal expressed concerns about its caseload and limited mandate.<sup>44</sup>

In February, Mexican authorities reported that former functionaries of SEGALMEX, a government agency founded in 2019 focused on food security and the welfare of small-scale farmers, embezzled between USD \$550 and \$850 million through bid rigging. This corruption scandal, which is among the biggest in Mexico's history, has resulted in the FGR filing 69 complaints filed involving over 80 individuals, including 41 former public officials.<sup>45</sup>

Notably, Genaro García Luna, the head of Mexico's equivalent to the FBI under former President Felipe Calderón, was convicted in the Eastern District of New York in February for accepting bribes from a Mexican drug cartel.<sup>46</sup> In response to Luna's conviction, U.S. Senator Chuck Grassley issued a report that accused U.S. officials of overlooking corruption in Mexico. The report claims that the U.S. Drug Enforcement Administration ("DEA") had credible information dating back to 2010 that García Luna was working for a drug cartel, but that the DEA did not share this information with the U.S. Ambassador to Mexico.<sup>47</sup> In May, FGR obtained arrest warrants for García Luna and his alleged accomplices.<sup>48</sup> In December, Mexican authorities arrested one of García Luna's sisters—one of the 61 people FGR has accused of embezzlement.<sup>49</sup>

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In October, following a settlement in relation to a bribery scandal, Petróleos Mexicanos (PEMEX), a state-owned oil company of Mexico, lifted its three-year ban on business with Vitol, a large commodities trader. President López Obrador previously had stated that PEMEX would resume business with Vitol only upon the payment of adequate compensation and disclosure of the names of those involved in the scandal.<sup>50</sup>

“Outgoing President Andrés Manuel López Obrador and his administration largely fell short of his ambitious campaign platform to bolster Mexico’s fight against corruption... and Mexican anti-corruption enforcement, especially against corporations, remains more limited....”

**C. Looking Ahead**

With a presidential election on the horizon, Mexico is entering a critical juncture. This year, voters will select not only the nation’s president, but also all 500 members of Congress, all 128 senators, and several other local officials, providing another opportunity to bolster anti-corruption enforcement. For the first time, Mexico’s largest political parties have nominated two women, Claudia Sheinbaum and Xóchitl Gálvez.<sup>51</sup> Sheinbaum, the candidate for and longtime supporter of President López Obrador’s Morena party, is currently ahead in most polls, and her election could mean a continuation of many of President López Obrador’s policies. In addition, further growth of the FGR’s Specialized Prosecutor’s Office for Combatting Corruption may foretell more investigations and convictions this year.

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## Latin America

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IV. Other Latin American Developments

Below are some additional anti-corruption updates from Latin America over the past year:

- **Chile:** In June, *Caso Convenios*, an investigation into the transfer of public money to private foundations, surfaced. This is the first large corruption scandal to affect the current presidential administration and has led to multiple high-level resignations.<sup>52</sup> In August, Chile enacted Law No. 21,959, commonly referred to as the Economic Crimes Law. This law will take effect on September 1, expanding the list of crimes for which corporations can be liable and, for the first time under Chilean law, considers the imposition of a monitor as a form of penalty. Significantly, the Economic Crimes Law relieves a corporation of liability if the entity can demonstrate having in place an effective corporate compliance program.<sup>53</sup> Also in August, President Boric signed into law a bill protecting whistleblowers in corruption cases within the government.<sup>54</sup>
- **Colombia:** In March, Colombia's Constitutional Court found several articles of the nation's anti-corruption law to be unconstitutional, resulting in the articles, which modified whistleblower protection programs and created new methods to assess fines for financial crimes, not taking effect.<sup>55</sup> In June, allegations of irregular campaign finance activities involving President Petro emerged after a series of messages suggesting President Petro's campaign may have raised funds from groups connected to drug trafficking were leaked. Colombia's congressional Commission of Investigation and Accusation ordered a preliminary investigation into the allegations in December.<sup>56</sup> In July, the son of President Petro was arrested on illicit enrichment and money laundering charges. He is currently facing trial and has decided to cooperate with the

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authorities, despite initially denying all allegations.<sup>57</sup> In August, Colombian prosecutors announced criminal indictments against 60 individuals allegedly involved in a bribery scheme with the Colombian conglomerate Grupo Aval and its banking subsidiary, Corficolombiana. In parallel, as discussed above, the companies settled with U.S. authorities related FCPA charges for \$80 million, the first FCPA action coordinated with Colombian authorities.<sup>58</sup>

- **Ecuador:** An Ecuadorian judge approved in March the Attorney General's request to file charges against 37 people, including former President Lenin Moreno, relating to alleged bribery over the Chinese-built hydroelectric Coca Coda Sinclair hydroelectric project. Moreno, who resides in Paraguay, has failed to appear before the courts.<sup>59</sup> More recently, in October, Ecuador elected Daniel Noboa, a businessman and politician, as president. Noboa's term will run only through May 2025, the remainder of former president Guillermo Lasso's term. Lasso cut his term short when he dissolved the opposition-led National Assembly in May as lawmakers pursued impeachment proceedings against him over alleged corruption and embezzlement.<sup>60</sup>
- **Guatemala:** In January, Guatemala's top anti-corruption prosecutor, Rafael Curruchiche, announced actions against Ivan Velasquez, Colombia's defense minister, for alleged misconduct stemming from Velasquez's investigation into corruption allegations involving Odebrecht (now Novonor) during his time as the head of a UN-backed anti-corruption commission in Guatemala. Critics suggest the charges against Velasquez reflect Guatemala's attempt to retaliate against investigators of high-level corruption.<sup>61</sup> In May, Guatemalan authorities also arrested Stuardo Campos, the country's prosecutor for crimes against migrants and a former anti-corruption prosecutor, for alleged abuse of authority.<sup>62</sup>

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More recently, following a presidential election in August, Bernardo Arevalo, representing the Semilla Movement party, was sworn in as President of Guatemala on January 14, 2024.<sup>63</sup> President Arevalo ran on a strong anti-corruption platform, and time will tell whether he fulfills his related campaign promises.

- **Peru:** In February, the country's top prosecutor initiated a formal criminal investigation into former President Castillo for a range of misconduct dating back to July 2021, including influence peddling, organized crime, collusion, and attempting illegally to dissolve Congress.<sup>64</sup> Peru's Supreme Court in June ordered the seizure of Castillo's properties, as he remains in pre-trial detention following a judge order in March.<sup>65</sup> In parallel, the Attorney General's Office launched investigations into two former ministers appointed by Castillo,

**“Ultimately, ... the region's effectiveness in combatting corruption will depend on important factors that include elected leaders committing to needed reforms, adequately resourcing enforcement authorities and respecting their independence, and supporting cross-border coordination and collaboration.”**

alleging their participation in bribery schemes involving the state-owned oil company, Petroperu. In April, former president Alejandro Toledo was arrested and extradited on allegations that he had received \$35 million in bribes from Odebrecht.<sup>66</sup> In October, the General Secretary of the Peru Libre political party (Vladimir Cerron) was sentenced to more than three years in prison and banned from holding public office for three and a half years due to corruption crimes committed during his tenure as a regional governor.<sup>67</sup>

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- **Venezuela:** On March 20, President Nicolás Maduro announced a crackdown on corruption, largely focused on the country's oil industry and targeting PDVSA, a state-owned oil company. In the days and weeks that followed, several important political figures resigned or were imprisoned, including Tareck El Aissami, a longtime Maduro ally who resigned from his post as Minister of Petroleum. Skeptics of Maduro's anti-corruption campaign characterize this recent crackdown as part of Maduro's political strategy for reelection in 2024 and Venezuela's bilateral talks with the United States regarding sanctions on the oil industry. In October, the United States eased sanctions on Venezuela's oil, gas, and gold sectors on the condition that international observers monitor the upcoming presidential election.<sup>68</sup>

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