



2021 YEAR IN REVIEW

FCPA Enforcement and Anti-Corruption Developments

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FCPA Enforcement and Anti-Corruption Developments

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Executive Summary

During 2021, the second year of the global pandemic and first year of the Biden administration, corporate enforcement of the FCPA declined precipitously. Enforcement of the FCPA declined to its lowest level in a decade, and the DOJ and SEC both brought the fewest FCPA enforcement actions in a first-year presidency since George W. Bush's administration in 2001. Corporate penalty amounts dropped in parallel with the decline in enforcement actions, with U.S. authorities assessing \$259 million in penalties in 2021, a more than 90% decline from 2020's total of \$3.1 billion.

Nonetheless, there are signs that enforcement may resume in 2022 and that companies should not let down their guard and should continue to ensure their compliance programs are effective. The Biden administration issued the U.S. Strategy on Countering Corruption on December 6, 2021, following the president's issuance of the June 3 National Security Study Memorandum establishing countering corruption as a core national security interest and kicking off a 200-day interagency study period. The strategy encompasses a number of significant new anti-corruption initiatives and reiterates the Administration's commitment to enforcing the FCPA and other laws used to combat corruption. Deputy Attorney General Lisa Monaco announced a forthcoming "surge" in FCPA enforcement, and the DOJ has increased resources in its Fraud Section commensurately. There is also increasing interagency coordination, such as the formation of Joint Task Force Alpha, a federal law enforcement task force to facilitate coordination between U.S. authorities in an effort to further enhance anti-corruption enforcement in Mexico, Guatemala, Honduras, and El Salvador. In the latter part of 2021, the DOJ also announced changes in corporate enforcement policies, including a return to the use of corporate compliance monitors and a broader definition of recidivism that takes into account criminal, civil, and regulatory violations outside of the FCPA context, along with an intention to reexamine corporate enforcement policies with a view toward further refinements.

Despite resolving fewer corporate resolutions this year, the SEC has similarly made announcements signaling increased enforcement in 2022. Allison Herren Lee, then-acting chair of the SEC, announced that the Commission had restored the authority of senior officials in the Division of Enforcement to initiate investigations, rescinding a change introduced during the Trump administration. These policy announcements and early indications of greater investigatory activity suggest that the DOJ and SEC may soon return to the levels of FCPA enforcement activity seen in prior years. Despite the decrease in enforcement, use of the SEC's whistleblower system skyrocketed in 2021. Reports increased by 75% and whistleblower awards increased by more than 250% to a total of \$448 million awarded, including two awards of \$114 million and an award of \$50 million from actions resolved in prior years. FCPA-specific whistleblower tips were also up by 24%.

On the international stage, foreign authorities and multilateral organizations were active in enforcement, policy, and cooperation. The European Union's recently formed regional prosecution office announced its first investigations aimed at corruption, while the OECD issued new anti-bribery and corruption recommendations emphasizing multi-lateral cooperation enforcement. Various countries announced significant enforcement actions against public officials, including China, France, Japan, Mexico, and Peru, as well as individual prosecutions of CEOs at companies involved in corruption.

Despite a quiet year for FCPA enforcement activity, substantive policy changes by the Biden administration signal that we may see accelerated FCPA enforcement activity in the coming years rather than a repeat of 2021. Our reflections on the year's most significant developments in anti-corruption and FCPA enforcement and policy are below.

Corporate Enforcement Overview

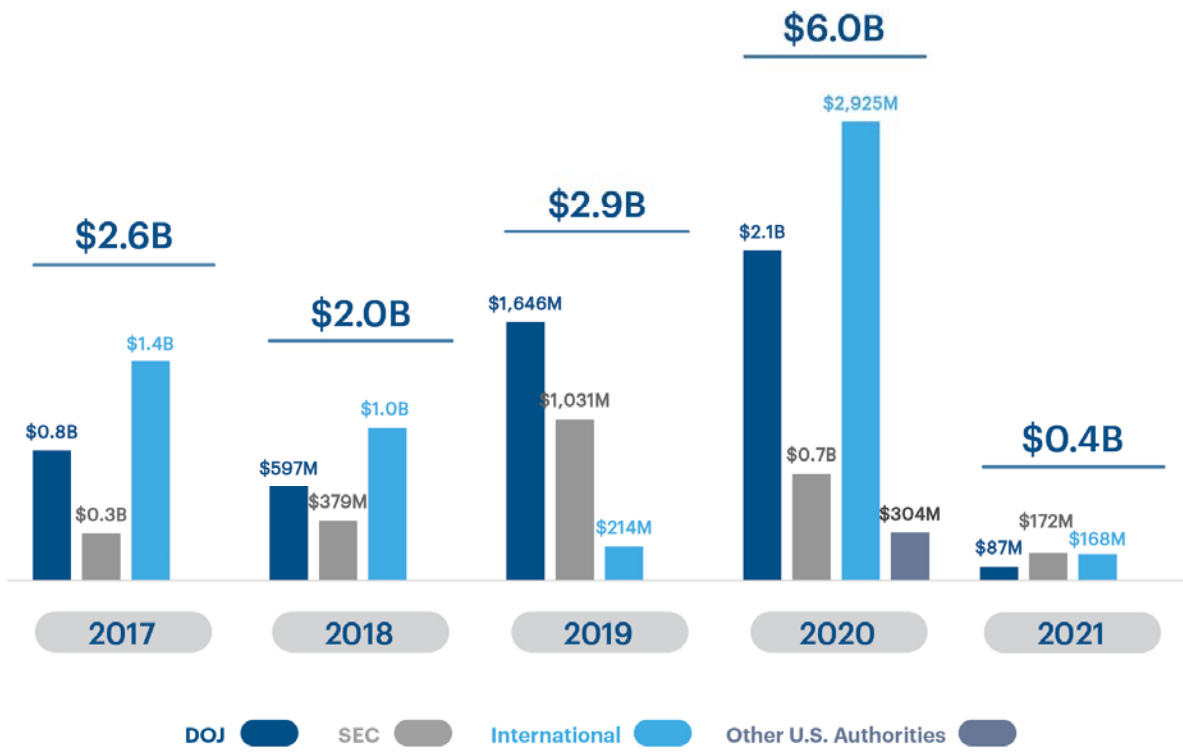
In 2021, the DOJ resolved two and the SEC resolved four corporate enforcement actions.¹ The SEC’s total continues a decline in enforcement that began in 2020. The DOJ’s total has decreased significantly after maintaining consistent, if modest, levels of enforcement since 2017.



FCPA CORPORATE ENFORCEMENT ACTION RESOLUTIONS, 2017–2021

¹ The data reflected in this report counts only cases that charge one or more FCPA violations and does not include cases that may have arisen from a foreign bribery investigation but solely charge non-FCPA violations, such as money laundering, wire fraud or domestic bribery. Enforcement actions were counted based on the year they were announced. See *Related Enforcement Actions*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/criminal-fraud/related-enforcement-actions>; *SEC Enforcement Actions: FCPA Cases*, U.S. SEC. & EXCH. COMM’N, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>. Resolutions announced on the same day by the same enforcement agency against corporate affiliates were counted as one resolution (e.g., Novartis Hellas S.A.C.I. and Alcon Pte Ltd, as well as The Goldman Sachs Group, Inc. and Goldman Sachs (Malaysia) Sdn. Bhd.). Charges brought by different agencies against the same corporation were counted as separate corporate enforcement actions (e.g., Amec Foster Wheeler’s deferred prosecution agreement with the DOJ and cease-and-desist order with the SEC).

These six enforcement actions resulted in approximately \$258.9 million in fines, penalties, disgorgement and prejudgment interest, of which around \$87.2 million was assessed by the DOJ and around \$171.7 million by the SEC.² The DOJ credited another \$23 million in penalties assessed by foreign authorities in foreign prosecutions associated with U.S. enforcement actions. In total, penalties assessed by U.S. authorities declined by more than 90% from over \$3 billion in fines, penalties, and prejudgment interest assessed in 2020.

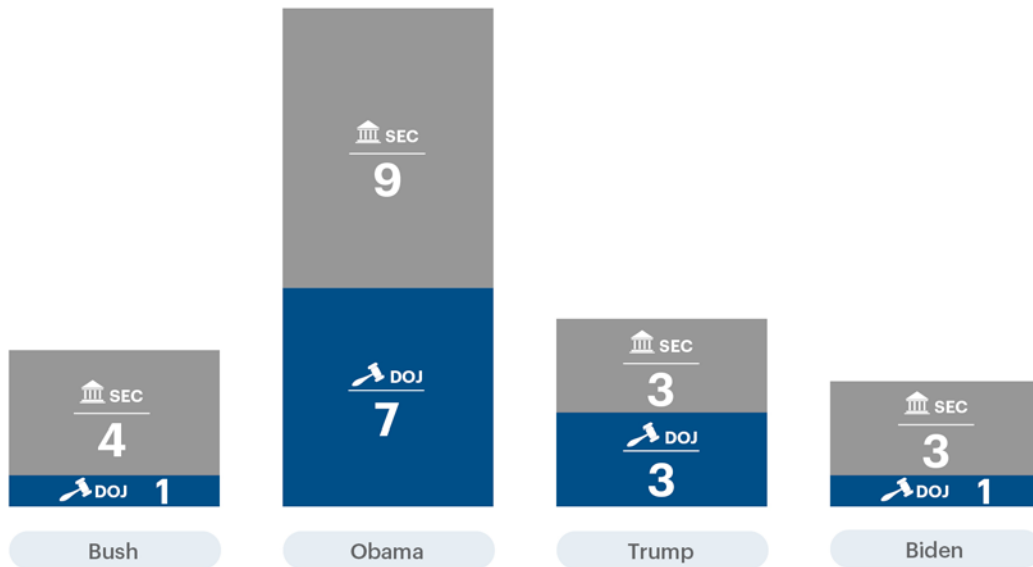


FCPA CORPORATE ENFORCEMENT ACTION PENALTIES, 2017–2021

² To determine the total penalty amounts, we counted criminal and civil penalties, fines, disgorgement and prejudgment interest payments attributable only to the FCPA charges in a resolution with the DOJ or the SEC. Thus, where a resolution included an FCPA penalty in addition to a non-FCPA penalty, only the FCPA penalty was aggregated. Additionally, the total penalty amounts account for offsets, where applicable, between the penalties assessed by the DOJ and the SEC as well as offsets between U.S. and foreign authorities. “Other U.S. Authorities” refers to the Board of Governors of the Federal Reserve System and the New York State Department of Financial Services, which assessed penalties in related investigations.

Comparing the first years of presidential administrations back to 2001, the Biden administration resolved only one-quarter (4) the number of corporate enforcements resolved in the first year of the Obama Administration (16).³ The Biden administration resolved a similar number of enforcement actions as the first years of the Trump (6) and Bush (5) administrations.

Of course, FCPA investigations typically take years to resolve, so the number of resolutions in the first year of a presidency is largely a reflection of investigations that had been initiated by prior administrations. Moreover, the process of resolution may be slowed in the early stages of a new administration by the confirmation process for political appointees and career supervisors, and the resulting absence of personnel in key managerial roles.

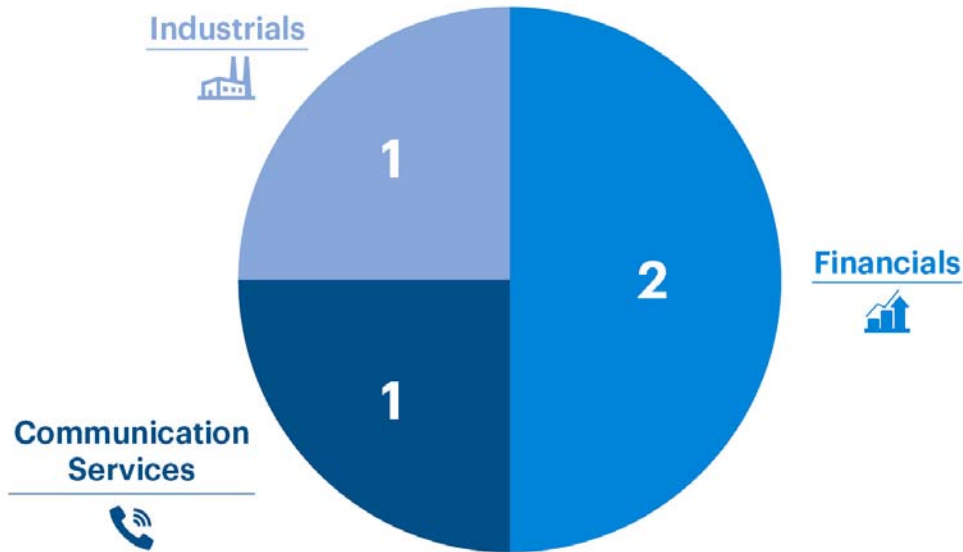


FCPA CORPORATE ENFORCEMENT ACTIONS IN THE FIRST YEAR OF EACH NEW ADMINISTRATION (Bush - 2001; Obama - 2009; Trump - 2017; Biden - 2021)⁴

³ To determine the number of corporate enforcement actions brought in the first year of a presidential administration, we counted all corporate enforcement actions announced in that year after the date of inauguration. Thus, for example, eight DOJ and SEC enforcement actions announced in January 2017 prior to the inauguration of the Trump administration were not credited to that administration’s tally. For years predating the annual publication of this Report, we relied on enforcement actions listed by the DOJ and SEC on their websites. See *Related Enforcement Actions*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/criminal-fraud/related-enforcement-actions>; *SEC Enforcement Actions: FCPA Cases*, U.S. SEC. & EXCH. COMM’N, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>.

⁴ This chart includes only enforcement actions announced post-inauguration in the first calendar year of a presidential administration.

The DOJ and the SEC entered into corporate resolutions with companies across several industries, although the field was necessarily limited by the low number of resolutions.⁵ As in recent years, enforcement activity touched the financial sector, but there was also one resolution each in the communication services and industrials sectors.⁶



2021 FCPA CORPORATE ENFORCEMENT RESOLUTIONS BY INDUSTRY

⁵ For the purposes of industry classification, corporations charged by different agencies were counted as one corporation (e.g., Amec Foster Wheeler—despite entering a deferred prosecution agreement with the DOJ and consenting to a cease-and-desist order with the SEC—was, for industry classification purposes, counted only once). In 2021, the DOJ and the SEC resolved a total of six separate enforcement actions against four corporations and their subsidiaries or affiliates.

⁶ Industries were defined according to the sector classifications set by S&P Global Market Intelligence, pursuant to the Global Industry Classification Standard. See *Companies, Assets and Profiles*, S&P GLOBAL (2020), <https://platform.mi.spglobal.com/web/client?auth=inherit#dashboard>; S&P GLOBAL, GLOBAL INDUSTRY CLASSIFICATION STANDARD (2018), https://www.spglobal.com/marketintelligence/en/documents/112727-gics-mapbook_2018_v3_letter_digitalspreads.pdf. Resolutions announced on the same day against corporate affiliates were counted as one resolution, irrespective of the enforcement agency.

The map below demonstrates the range of countries that have been the locus of conduct deemed to violate the FCPA—including the locations of subsidiaries implicated in the government’s allegations, of meetings concerning bribes, and of the bases of operations for third-party intermediaries—based upon the allegations in the 2021 corporate resolutions. As in 2019 and 2020, China and Brazil featured in the largest number of FCPA cases, at two cases each, joined this year by the United Arab Emirates with two cases. Every case that the DOJ and SEC resolved in 2021 involved conduct in more than one country.



2021 FCPA CORPORATE ENFORCEMENT ACTIONS BY LOCATION

DOJ Corporate Enforcement

In 2021, the DOJ announced just two corporate resolutions and assessed \$87.2 million in penalties. Both of the resolutions in 2021 involved foreign companies (one British and one German entity). As discussed below neither the DOJ nor the SEC brought a single enforcement action against a U.S. company in 2021, as compared with four enforcement actions brought by the DOJ against U.S. entities in 2020, constituting half of the DOJ's resolutions.

The DOJ did not publicly issue any declination letters in 2021 pursuant to the FCPA Corporate Enforcement Policy.⁷ This is the first year since 2016, when the pilot program preceding the policy was launched, in which the DOJ did not issue such a letter.

Based on companies' public announcements, the DOJ also reportedly closed its investigations into at least three companies that had been under investigation for potential corruption offenses without bringing enforcement actions or issuing public declination letters (Pactiv Evergreen Inc.; Baker Hughes Co.; and BRF S.A.).⁸ Therefore, the bases for these decisions were not made public, including whether there was conduct sufficient to support a prosecution.

Surge in Resources and Coordination

In 2021, the DOJ Fraud Section's FCPA Unit grew to a record size, with 39 prosecutors in total. The DOJ also added to the Fraud Section's strategy, policy and training unit several attorneys who specialize in corporate compliance. Deputy Attorney General Lisa Monaco announced that the DOJ is "surg[ing] resources" for corporate enforcement. As one example, a new squad of FBI agents has been designated to work full time within the Fraud Section.⁹ To be clear, these agents will presumably investigate the full array of offenses that are within the Fraud Section's remit, including securities and commodities fraud and health care fraud. However, they will likely also supplement the agents in the FBI's International Corruption Unit at FBI Headquarters and its International Corruption Squads operating in New York City, Los Angeles, Washington, D.C., and Miami.

Lorinda Laryea, an acting principal deputy chief in the DOJ Fraud Section, said that the section will also look to increase coordination across the Department, such as between the FCPA Unit and the DOJ Narcotic and Dangerous Drug Section. For example, according to Laryea, both foreign bribery and narcotics prosecutors might coordinate investigations where individuals who are laundering money for drug cartels might also be laundering money for corrupt officials. Laryea further noted that both the FCPA Unit and the Market Integrity and Major Frauds Unit are looking forward to working with the new squad of embedded FBI agents, signaling that at least some of the agents will be involved in FCPA investigations. According to Laryea, the FCPA Unit is looking carefully at all possible avenues of information that could be relevant and increasing coordination with foreign authorities and counterparts.¹⁰

In February 2021, the DOJ hired Lauren Kootman, a former private practice attorney specializing in corporate investigations, to serve as a compliance specialist in the strategy unit. Kootman's appointment, along with the other attorneys in the strategy unit, appears to fill a hole in the Fraud Section left by the departure of Hui Chen, a former in-house compliance officer who was hired in 2015 to serve as the DOJ's first compliance consultant. Kootman previously served on a monitor team overseeing Braskem, the Brazil-based petrochemical company. Together with the addition of attorneys to the strategy unit, Kootman's

⁷ See Client Memorandum, DOJ Issues New FCPA Corporate Enforcement Policy, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (Nov. 30, 2017), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/doj-issues-new-fcpa-corporate-enforcement-policy?id=25619>.

⁸ Closures of investigations were counted based on the year in which the U.S. authority appears to have closed the investigation, irrespective of the year in which the company made its disclosure.

⁹ See Lisa O. Monaco, Deputy Att'y General, U.S. Dep't. of Just., Keynote Address at the 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>.

¹⁰ Lorinda Laryea, Principal Assistant Chief, DOJ Fraud Section's Foreign Corrupt Practices Act Unit, Women in White Collar Lunch at ABA 36th National Institute on White Collar Crime (Oct. 27, 2021).

hiring likely signals the DOJ's continuing focus on pragmatic corporate compliance.¹¹ Kootman may also be an important resource should the DOJ carry out its stated intention to resume more regular use of corporate compliance monitors.

DOJ's Revised Guidance on Corporate Enforcement Policies

In October 2021, Deputy Attorney General Monaco announced changes with immediate effect for pending and future cases, including FCPA investigations, in three areas: (1) consideration of a company's entire history of past misconduct when making decisions on charging and dispositions of investigations; (2) requirements for corporations under investigation again to provide "all relevant facts relating to the individuals responsible for the misconduct" in order to gain full credit for cooperation; and (3) guidance on the DOJ's use of corporate monitors.¹²

The DOJ announced that it is considering a wider variety of past misconduct when determining if a company is a recidivist and should therefore receive harsher punishment. Under the new guidance, prosecutors will now consider all of a company's prior criminal and civil offenses, including ones handled by different U.S. agencies and foreign jurisdictions, when determining a resolution. According to David Last, the chief of the DOJ Fraud Section's FCPA Unit, when prosecutors are evaluating a company's past criminal and civil record, they will look at the nature of the prior misconduct and how recently it occurred—including its seriousness and pervasiveness—and whether senior management were involved.¹³ He noted that "[t]o the extent that it's similar in nature, that's likely to be more relevant and is going to be weighed more heavily."¹⁴ Last cautioned that even conduct that occurred years ago could be relevant if the wrongdoing and culpable employees are the same. Last also mentioned that prosecutors will inquire in certain instances whether a root cause analysis of the prior misconduct was conducted at the time and whether the company has made changes to its compliance program. According to Last, "part of the reason we are trying to provide a little bit more guidance on this is to give a little bit of color to what those determinations are, but it's not an exhaustive list."¹⁵

Notably, Deputy Attorney General Monaco's announcement regarding a company's disclosure of information relating to individual misconduct marked a return to the disclosure standard under the September 9, 2015 "Yates Memo" that outlined steps to strengthen enforcement related to individual corporate wrongdoing.¹⁶ The Yates Memo, like the Deputy Attorney General's announcement, required companies to "provide [DOJ] all relevant facts relating to the individuals responsible for the misconduct" in order to be eligible for cooperation credit.¹⁷ Under the Trump Administration, former Deputy Attorney General Rod J. Rosenstein had relaxed the standard to require companies to provide information only on "individuals *substantially* involved in or responsible for the misconduct at issue" (emphasis added).¹⁸

¹¹ See Dylan Tokar, *Justice Department's Foreign Bribery Unit Adds Prosecutors, Compliance Expertise*, WALL ST. J. (Mar. 8, 2021, 5:30 AM), <https://www.wsj.com/articles/justice-departments-foreign-bribery-unit-adds-prosecutors-compliance-expertise-11615199402>.

¹² See Lisa O. Monaco, Deputy Att'y Gen., U.S. Dep't. of Just., Keynote Address at the 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>.

¹³ See Ines Kagubare, *FCPA Unit Chief Clarifies DOJ Approach to Corporate Recidivism*, GLOB. INVESTIGATIONS REV. (Dec. 9, 2021), <https://globalinvestigationsreview.com/just-anti-corruption/corporate-liability/fcpa-unit-chief-clarifies-doj-approach-corporate-recidivism/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Client Alert, *New DoJ Memo by DAG Yates Intended to Increase Prosecutions of White Collar Executives and Other Employees*, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (Sept. 11, 2015), <https://www.paulweiss.com/practices/litigation/white-collar-regulatory-defense/publications/new-doj-memo-by-dag-yates-intended-to-increase-prosecutions-of-white-collar-executives-and-other-employees?id=20739>.

¹⁷ Memorandum from Sally Quinlan Yates, Deputy Att'y Gen., U.S. Dep't of Just., to All Component Heads and United States Attorneys (Sept. 9, 2015), <http://www.justice.gov/dag/file/769036/download>.

¹⁸ Rod J. Rosenstein, Deputy Att'y Gen., U.S. Dep't. of Just., Remarks at the American Conference Institute's 35th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2018), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-0> (hereinafter, "Rosenstein Remarks"); see also Client Alert, *DOJ Announces New Standards for Corporate Cooperation*, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (Dec. 5, 2018), <https://www.paulweiss.com/practices/litigation/white-collar-regulatory-defense/publications/doj-announces-new-standards-for-corporate-cooperation?id=27914>.

The DOJ's third policy change, regarding corporate monitors, similarly represents a move away from the comparatively more relaxed enforcement standard under the Trump Administration. Deputy Attorney General Monaco revised former Assistant Attorney General of the Criminal Division Brian A. Benczkowski's guidance¹⁹ on corporate monitors that had "emphasize[d] the limited circumstances in which the appointment of a monitor" would apply. In contrast, the current guidance underscores the use of independent monitors "to encourage and verify compliance" and that prosecutors are "free to require the imposition of independent monitors whenever it is appropriate. . . to satisfy our prosecutors that a company is living up to its compliance and disclosure obligations under the DPA or NPA."²⁰ Deputy Attorney General Monaco also noted that the DOJ would examine whether it should institute a standardized selection process for corporate monitors across its divisions and offices.²¹

New Guidance on Consequences of Failure to Comply with Settlement Terms

At the same time, Deputy Attorney General Monaco announced that DOJ would hold accountable any company that breaches the terms of its DPA, and that breaching a DPA could lead to punishment more severe than was originally agreed to.²² In November, John Carlin, the principal associate deputy attorney general, emphasized that there will be a "crackdown" on companies that have violated the terms of a DPA.²³

An early example of this policy concerned Ericsson, the Swedish multinational telecommunications company. On October 21, Ericsson announced that DOJ prosecutors had determined that the company had violated the terms of a \$1.1 billion DPA reached in 2019 over allegations of bribery in Djibouti, China, Vietnam, Kuwait and Indonesia. The DOJ notified the company that it had breached the agreement by failing to provide DOJ certain documents and information related to the settlement.²⁴ Pursuant to the DPA, in the event of a breach of the agreement the government can choose to invalidate the agreement and prosecute Ericsson using the admissions Ericsson made in the DPA against the company at trial, or extend the agreement by one year.²⁵ While it remains to be seen whether the DOJ will further prosecute Ericsson, extend its DPA, or just what the practical consequences will be, this turn of events highlights that the DOJ is monitoring ongoing compliance with its agreements and there may be serious consequences if the Department determines, in its sole discretion, that a defendant has not complied.

Related Non-FCPA Enforcement Activity

In August, the DOJ announced that it had repatriated an additional \$452 million in misappropriated funds in the continuing civil forfeiture saga involving **1Malaysia Development Berhad (1MDB)**.²⁶ These funds had been laundered from 1MDB, Malaysia's former investment development fund, through major financial institutions worldwide. Earlier in June, the DOJ announced that a federal grand jury had returned a superseding indictment charging two individuals with orchestrating an illicit campaign to

¹⁹ See Client Alert, DOJ Announces New Guidance for Imposing Compliance Monitors in Criminal Division Matters, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (Oct. 17, 2018), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/doj-announces-new-guidance-for-imposing-compliance-monitors-in-criminal-division-matters?id=27647>; see also Brian A. Benczkowski, Assistant Att'y Gen. of Crim. Div., U.S. Dep't of Just., Remarks at NYU School of Law Program on Corporate Compliance and Enforcement Conference on Achieving Effective Compliance (Oct. 12, 2018), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-nyu-school-law-program> (hereinafter, "Benczkowski Remarks").

²⁰ Lisa O. Monaco, Deputy Att'y Gen., U.S. Dep't. of Just., 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>.

²¹ *Id.*

²² *Id.*

²³ See Stefania Palma, *DoJ Warns of Impending Corporate Crime Crackdown*, FIN. TIMES (Nov. 10, 2021), <https://www.ft.com/content/81a90d89-2fa5-45b3-8de6-d70ae9e37810>.

²⁴ See Press Release, Update on Deferred Prosecution Agreement, ERICSSON, (Oct. 22, 2021), <https://mb.cision.com/Main/15448/3438066/1484624.pdf>; see also Dylan Tokar, *Ericsson Accused of Breaching Bribery Settlement With Justice Department*, WALL ST. J. (Oct. 22, 2021, 12:24 PM), <https://www.wsj.com/articles/ericsson-accused-of-breaching-bribery-settlement-with-justice-department-11634911285>.

²⁵ See Deferred Prosecution Agreement between the United States Attorney for the Southern District of New York and Telefonaktiebolaget LM Ericsson (Nov. 26, 2019), ¶ 17, available at <https://www.justice.gov/opa/press-release/file/1272151/download>.

²⁶ See Press Release, Over \$1 Billion in Misappropriated 1MDB Funds Now Repatriated to Malaysia, U.S. DEP'T. OF JUST. (Aug. 5, 2021), <https://www.justice.gov/opa/pr/over-1-billion-misappropriated-1mdb-funds-now-repatriated-malaysia>.

influence U.S. authorities to drop the 1MDB embezzlement investigation, and to send a Chinese dissent back to China. The individuals were also charged with conspiracy to commit money laundering related to their alleged foreign influence campaign.

To date, more than \$1.2 billion has been returned to Malaysia, representing the largest recovery to date under the DOJ's Kleptocracy Asset Recovery Initiative. The DOJ alleges that from 2009 through 2015, more than \$4.5 billion was stolen through international money laundering and embezzlement and used to purchase luxury assets worldwide, including real estate and a 300-foot superyacht. The DOJ continues to seek the repatriation of additional funds.

The DOJ continues to bring charges against former Venezuelan officials linked to Venezuela's state-owned and state-controlled energy company **Petróleos de Venezuela S.A. (PDVSA)**. In March, a former official of Citgo Petroleum Corporation, a Houston-based subsidiary of PDVSA, pleaded guilty to one count of conspiracy to commit money laundering.²⁷ He admitted to accepting more than \$7 million in bribes in exchange for assistance with procuring contracts with Citgo and other business advantages, and then laundering those bribe payments into the United States. Then in August, the DOJ arrested and charged a South Florida resident due to his alleged involvement in a bribery scheme to obtain contracts with PDVSA and Venezuela's state-owned and state-controlled food company that purchased food for Venezuela, *Corporación de Abastecimiento y Servicios Agrícola (CASA)*. To date, the DOJ has announced charges against 29 individuals as part of its broader investigation into bribery at PDVSA. However, as discussed later in this report, charges against one such indicted individual were dismissed by a U.S. federal court in November.²⁸

In August, **FIFA**, the world organizing body of soccer, succeeded in its joint application for remission from the DOJ as compensation for losses the organization suffered as a victim in connection with the Department's long-running investigation and prosecution of corruption in international soccer.²⁹ In total, the DOJ awarded \$201 million seized from the bank accounts of former soccer officials prosecuted for criminal corruption. The money will fund a newly formed World Football Remission Fund managed by the FIFA Foundation, an independent charitable foundation. The World Football Remission Fund will be used to finance soccer-related projects, with a particular focus on youth and community programs. Of the total, approximately \$60 million will be earmarked to FIFA projects and programs, with the rest earmarked for projects sponsored by CONCACAF, the confederation responsible for soccer governance in North and Central America, and CONMEBOL, the confederation responsible for soccer governance in South America.

SEC Corporate Enforcement

In 2021, the SEC resolved four corporate enforcement actions and assessed \$171.7 million in penalties, including disgorgement and prejudgment interest.

Based on companies' public announcements, the SEC apparently closed its investigations into at least four companies that had been under investigation for potential FCPA offenses (Pactiv Evergreen Inc.; Baker Hughes Co.; Avianca Holdings S.A.; and BRF S.A.). As with the DOJ's decisions to close various investigations, it is difficult to draw any conclusions from these decisions, including whether there was any identified conduct that violated the FCPA.

²⁷ See Press Release, Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme, U.S. DEP'T. OF JUST. (Mar. 23, 2021), <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>.

²⁸ See *supra* [Rafoi-Blueler discussion].

²⁹ See Press Release, Justice Department Approves Remission of Over \$32 Million in Forfeited Funds to Victims in the FIFA Corruption Case, U.S. DEP'T. OF JUST., (Aug. 24, 2021), <https://www.justice.gov/opa/pr/justice-department-approves-remission-over-32-million-forfeited-funds-victims-fifa-corruption>; News Alert, DOJ Awards FIFA Foundation \$201 Million in Restitution as Compensation for Criminal Activities of Former Football Officials, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, (Aug. 24, 2021), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/news/doj-awards-fifa-foundation-201-million-in-restitution-as-compensation-for-criminal-activities-of-former-football-officials?id=40811>.

SEC Policy Pronouncement Affecting Corporate Enforcement

In conjunction with the DOJ, in October 2021, the incoming SEC leadership announced its framework for enforcement. Sanjay Wadhwa, newly-appointed deputy director of the Division of Enforcement, explained that the SEC will focus on three factors in its enforcement analysis: (1) whether the wrongdoing was egregious; (2) whether the company obstructed the SEC probe; and (3) whether an admission of wrongdoing and SEC enforcement action would strengthen deterrence.³⁰ Similarly, Gurbir Grewal, director of the Division of Enforcement, and Wadhwa stressed the importance of admitting wrongdoing in order to ensure transparency and reestablish trust, a signal that the SEC will return to a practice of requiring defendants to admit wrongdoing, “where heightened accountability and acceptance of responsibility are in the public interest.”³¹

SEC Rolls Back Trump Administration Policies

In February 2021, Allison Herren Lee, acting chair of the SEC, announced that the Commission had restored the authority of senior officials in the Division of Enforcement to initiate investigations, permitting approximately 36 senior officials to authorize subpoenas to companies and individuals for records and testimony. During the Trump administration, the SEC withdrew the authority that had been sub-delegated to senior officials and limited the power to authorize orders of investigation to the director of enforcement.³² Lee said that the reinstated “delegation of authority will enable investigative staff to act more swiftly to detect and stop ongoing frauds, preserve assets, and protect vulnerable investors.”³³

Also in February 2021, Lee rescinded a policy instituted by former SEC Chairman Jay Clayton that the Commission would consider settlement offers that were contingent upon the SEC agreeing to waive certain automatic penalties. Lee said that penalty waivers should not be used as a “bargaining chip” during settlement negotiations. In a public statement, SEC Commissioners Hester Peirce and Elad Roisman criticized Lee’s decision, stating it will make settlement negotiations harder for the SEC, resulting in “a longer period between the initiation and resolution of enforcement matters,” and that individuals and companies may now be less willing to enter into settlements due to the “potential collateral consequences” of doing so.³⁴

SEC Enforcement Division Director Warns of Tougher Penalties

In his first public remarks, SEC Enforcement Director Grewal warned that the Commission may impose heavier penalties for misconduct it sees repeatedly. According to Grewal, the SEC “must design penalties that actually deter and reduce violations, and are not seen as an acceptable cost of doing business.” Grewal noted that “[e]ven if a firm or individual hasn’t offended before, if they violate a law or rule for which the SEC has previously and publicly charged other actors in their industry, it may be appropriate for penalties or other remedies to be increased in response to the lack of deterrence.”³⁵

SEC Whistleblower Program

In fiscal year 2021, the upward trend of whistleblower tips to the SEC continued with both the overall number of tips, as well as FCPA-related whistleblower tips, surpassing tips in any previous fiscal year since the launch of the program: 12,210 and 258,

³⁰ See Sanjay Wadhwa, Deputy Dir., U.S. Sec. & Exch. Comm’n Div. of Enf’t, Remarks at SEC Speaks 2021, Practising Law Institute (Oct. 13, 2021), <https://www.pli.edu/programs/the-sec-speaks>.

³¹ See Gurbir Grewal, Dir., U.S. Sec. & Exch. Comm’n Div. of Enf’t, Remarks at SEC Speaks 2021 (Oct. 13, 2021), <https://www.sec.gov/news/speech/grewal-sec-speaks-101321>.

³² Dave Michaels, SEC Chief Scales Back Powers of Enforcement Staff, Wall Street J. (Feb. 15, 2017), https://www.wsj.com/articles/sec-chief-scales-back-powers-of-enforcement-staff-1487199642?mod=article_inline.

³³ Statement of Acting Chair Allison Herren Lee on Empowering Enforcement to Better Protect Investors, U.S. Sec. & Exch. Comm’n (Feb. 9, 2021), <https://www.sec.gov/news/public-statement/lee-statement-empowering-enforcement-better-protect-investors>; see also Dave Michaels, SEC Expands Enforcement Staff’s Power to Start New Investigations, WALL ST. J. (Feb. 9, 2021), <https://www.wsj.com/articles/sec-expands-enforcement-staffs-power-to-start-new-investigations-11612894490>.

³⁴ Statement of Acting Chair Allison Herren Lee on Contingent Settlement Offers, U.S. Sec. & Exch. Comm’n (Feb. 11, 2021), <https://www.sec.gov/news/public-statement/lee-statement-contingent-settlement-offers-021121>; Statement of Commissioners Hester M. Peirce and Elad L. Roisman on Contingent Settlement Offers, U.S. Sec. & Exch. Comm’n (Feb. 12, 2021), <https://www.sec.gov/news/public-statement/peirce-roisman-statement-contingent-settlement-offers-021221>.

³⁵ Gurbir Grewal, Dir., U.S. Sec. & Exch. Comm’n Div. of Enf’t, Remarks at PLI Broker/Dealer Regulation and Enforcement 2021 Conference (Oct. 6, 2021), <https://www.sec.gov/news/speech/grewal-pli-broker-dealer-regulation-and-enforcement-100621>.

respectively.³⁶ This represents an over 75% increase for total whistleblower tips and a 24% increase in FCPA-related tips compared to fiscal year 2020. While FCPA-related whistleblower tips declined under the Trump administration, this year’s tips also mark an 8% increase over pre-Trump FCPA-related tips in 2016.³⁷ The graph below shows the changes in whistleblower tips over the past five years.



SEC WHISTLEBLOWER TIPS AND TOTAL WHISTLEBLOWER AWARDS, FISCAL YEARS 2017–2021

According to the SEC’s annual report to Congress on the whistleblower program, about 60% of the award recipients in FY 2021 were current or former insiders of the entity about which they reported information of wrongdoing to the SEC. According to the report, over three-fourths of the insider-whistleblowers reported concerns “to their supervisors, compliance personnel, or through internal reporting mechanisms, or understood that their supervisor or relevant compliance personnel knew of the violations” before submitting tips to the Commission.³⁸

On May 18, 2021, the SEC awarded \$28 million—the tenth largest whistleblower award ever—to a whistleblower who voluntarily provided information that caused the SEC to launch an investigation that led to a successful FCPA enforcement action against Panasonic Avionics Corporation, which resulted in a \$280 million settlement.³⁹

On August 10, 2021, the SEC awarded \$3.5 million to a whistleblower whose tip helped expand an existing investigation into a new geographic area and led to FCPA charges against Juniper Networks Inc., a California-based networking and cybersecurity

³⁶ See U.S. Sec. & Exch. Comm’n, Annual Report to Congress: Whistleblower Program 28–29 (2021), <https://www.sec.gov/files/owb-2021-annual-report.pdf>.

³⁷ Cf. U.S. SEC. & EXCH. COMM’N, 2016 ANNUAL REPORT TO CONGRESS ON THE DODD-FRANK WHISTLEBLOWER PROGRAM 24 (Nov. 15, 2016), <https://www.sec.gov/files/owb-annual-report-2016.pdf>.

³⁸ U.S. SEC. & EXCH. COMM’N, 2021 ANNUAL REPORT TO CONGRESS: WHISTLEBLOWER PROGRAM 24 (Nov. 15, 2021), <https://www.sec.gov/files/owb-2021-annual-report.pdf>.

³⁹ See Press Release, U.S. Sec. & Exch. Comm’n, SEC Awards More Than \$28 Million to Whistleblower Who Aided SEC and Other Agency Actions (May 19, 2021), <https://www.sec.gov/news/press-release/2021-86>; see also Mengqi Sun, Whistleblower Is Awarded \$28 Million in Panasonic Avionics Case, WALL ST. J. (May 19, 2021), Mengqi Sun, Whistleblower Is Awarded Over \$3.5 Million in Juniper Bribery Case, WALL ST. J. (Aug. 10, 2021), <https://www.wsj.com/articles/whistleblower-is-awarded-over-3-5-million-in-juniper-bribery-case-11628630066>.

solutions company. Juniper agreed to pay more than \$11.7 million as part of a 2019 settlement with the SEC over allegations that the company violated the FCPA through its subsidiaries in Russia and China.⁴⁰

The SEC received tips from 99 countries in FY 2021. Similar to past years, the largest number of tips came from the United States, Canada, the People’s Republic of China, and the United Kingdom. While the SEC receives tips from the majority of countries around the globe, the continued absence of or low reporting from African countries may suggest gaps in publicizing information about the Whistleblower Program in those countries, as well as local obstacles to submitting tips. The map below shows the geographic distribution of whistleblower tips from foreign countries in 2021.⁴¹



2021 FCPA SEC WHISTLEBLOWER TIPS — WORLDWIDE, OUTSIDE OF THE UNITED STATES

On August 2, 2021, Gary Gensler, chairman of the SEC, announced that he had directed his staff to prepare possible revisions to two Trump-era amendments to the Whistleblower Program, adding that in the interim, the Commission would largely pause enforcement of the two amendments.⁴² One of the Trump-era amendments gives the SEC the discretion to lower a whistleblower award if it deems the amount to be unreasonably high. The other amendment gives the SEC the discretion to deny an award, in some instances, to whistleblowers who might be eligible to receive another payment from a different agency in a related enforcement action.⁴³ On August 5, 2021, following the announcement of the potential amendments to the

⁴⁰ See Mengqi Sun, *Whistleblower Is Awarded Over \$3.5 Million in Juniper Bribery Case*, WALL ST. J. (Aug. 10, 2021), <https://www.wsj.com/articles/whistleblower-is-awarded-over-3-5-million-in-juniper-bribery-case-11628630066>.

⁴¹ This map does not depict the approximately 4,087 tips from the United States and its territories.

⁴² See Mengqi Sun, *SEC Pauses Enforcement of Some Whistleblower Program Rules*, WALL ST. J. (Aug. 6, 2021), <https://www.wsj.com/articles/sec-pauses-enforcement-of-some-whistleblower-program-rules-11628297604>.

⁴³ See Statement in Connection with the SEC’s Whistleblower Program, U.S. Sec. & Exch. Comm’n (Aug. 2, 2021), <https://www.sec.gov/news/public-statement/gensler-sec-whistleblower-program-2021-08-02>.

amendments, the SEC issued a statement presenting interim measures pending the Commission's amendment process to ensure that whistleblowers "are not disadvantaged under the components of Rule 21F-3(b)(3) and Rule 21F-6 that may be revised."⁴⁴

Policy Pronouncements Affecting Anti-Corruption Enforcement

In contrast to the small number of FCPA enforcement actions in 2021, the White House made significant announcements aimed at restoring and creating new enforcement tools and priorities for anti-corruption work. In its first year, President Biden's administration signaled that it planned a significant overhaul of the United States' national and international anti-corruption efforts. On June 3, 2021, President Biden released a National Security Study Memorandum identifying efforts to counter corruption as a "core United States national security interest."⁴⁵ The memorandum outlined plans to curb foreign corruption by increasing anti-corruption programming and resources in the federal government. Under the memorandum's framework, an interagency review group—including the DOJ, State Department, Treasury Department, Commerce Department, Department of Defense, and ten other federal agencies and offices—prepared the first "United States Strategy on Countering Corruption," a report on strategic recommendations for fighting corruption.⁴⁶ As a result of this White House-led initiative, many of these departments and agencies have announced new initiatives and policies to prioritize fighting corruption, and each of them will be required to report annually on their progress. Together, these initiatives indicate an effort to provide more tools, information and resources to uncover the often difficult-to-detect hidden financial flows stemming from corrupt acts.

Tackling Kleptocracy and Beneficial Owner Transparency to Target Illicit Financing

On December 7, 2021, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") announced a new proposed rule to strengthen corporate reporting requirements regarding beneficial ownership aimed at tackling the use of shell companies to transfer and hold illicit proceeds.⁴⁷ On December 9, 2021, at President Biden's Summit for Democracy, U.S. Treasury Secretary Janet Yellen also announced forthcoming rulemaking by the Treasury to address the purchase of real estate with illicit funds through shell companies and authorized representatives to shield the beneficial owners.⁴⁸

These initiatives follow various efforts by Congress to target kleptocracy. On June 10, 2021, a group of lawmakers launched the bipartisan Congressional Caucus Against Foreign Corruption and Kleptocracy.⁴⁹ The caucus was formed to mobilize Congress on anti-corruption efforts and introduced several pieces of anti-corruption legislation in 2021, including the Combating Global Corruption Act, the Foreign Corruption Accountability Act, and the Transnational Repression Accountability and Prevention Act, which were passed by the U.S. House of Representatives on September 23, 2021, as part of the National Defense Authorization Act for Fiscal Year 2022.⁵⁰

⁴⁴ Procedures for the Commission's Use of Certain Authorities Under Rule 21F-3(B)(3) and Rule 21F-6 of the Securities Exchange Act of 1934, Exchange Act Release No. 34-92565, 86 Fed. Reg. 44604 (Aug. 5, 2021).

⁴⁵ Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, THE WHITE HOUSE, (June 3, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>; see also Client Memorandum, Biden Administration Launches U.S. Strategy on Countering Corruption, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (Dec. 14, 2021), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/biden-administration-launches-us-strategy-on-countering-corruption?id=41927>.

⁴⁶ See THE WHITE HOUSE, UNITED STATES STRATEGY ON COUNTERING CORRUPTION (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

⁴⁷ See Press Release, FinCEN Issues Proposed Rule for Beneficial Ownership Reporting to Counter Illicit Finance and Increase Transparency, FIN. CRIM. ENF'T NETWORK (Dec. 7, 2021), <https://www.fincen.gov/news/news-releases/fincen-issues-proposed-rule-beneficial-ownership-reporting-counter-illicit>.

⁴⁸ See The Summit for Democracy, *Preventing and Countering Corruption*, YOUTUBE, at 1:59:00 (Dec. 9, 2021), <https://www.youtube.com/watch?v=xgyanQm81aU&t=6896s>.

⁴⁹ See Press Release, Congress to Launch Counter-Kleptocracy Caucus at June 10 Event, COMM'N ON SEC. AND COOP. IN EUROPE, (June 2, 2021), <https://www.csce.gov/international-impact/press-and-media/press-releases/congress-launch-counter-kleptocracy-caucus-june>.

⁵⁰ See H.R. 4350, 117th Cong. §§ 1330, 1331, 6407, 6408 (2021) (as passed by House, Sept. 23, 2021); see also Press Release, Representatives Malinowski, Salazar, Cohen and Wilson Introduce Bipartisan Legislation to Stop Enablers of International Corruption, CONG. TOM MALINKOWSKI (Oct. 6, 2021), <https://malinowski.house.gov/media/press-releases/representatives-malinowski-salazar-cohen-and-wilson-introduce-bipartisan>.

The Biden Administration's Anti-Corruption Memorandum and Anti-Corruption Initiatives in Mexico and Central America

In addition to broad interagency initiatives, the Biden administration also set new regional anti-corruption policies. Notably, on June 7, 2021, U.S. Attorney General Merrick Garland announced the formation of Joint Task Force Alpha, a law enforcement task force that will facilitate coordination among the DOJ, the Department of Homeland Security, the FBI, and the Drug Enforcement Administration to further enhance anti-corruption enforcement in Mexico, Guatemala, Honduras, and El Salvador.⁵¹ The focus on corruption in Central America contrasts with the Trump administration's tacit role in the closure⁵² of two key internationally-backed anti-corruption organizations—the Commission Against Impunity In Guatemala (“CICIG”)⁵³ and the Mission to Support the Fight against Corruption and Impunity in Honduras (“MACCIH”).⁵⁴ In particular, the CICIG had led the investigation and prosecution of hundreds of Guatemalan officials, businesspeople, and narco-traffickers engaged in corruption, including several presidents.⁵⁵ Its closure has marked a deterioration of anti-corruption and rule of law efforts in the region culminating in the recent announcement by the United States that it had “lost confidence” in Guatemalan Attorney General Maria Consuelo Porras, was suspending cooperation with the Guatemala Attorney General's Office,⁵⁶ and was sanctioning Attorney General Porras.⁵⁷ Joint Task Force Alpha seeks to fill the gap in international anti-corruption efforts left by the two mechanisms, while taking a broader regional approach. In October, the joint task force launched new measures, including a tip line, to help identify and prosecute cases.⁵⁸

Similarly, on December 9, 2021, U.S. Secretary of State Anthony J. Blinken announced the creation of the State Department Coordinator on Global Anti-Corruption who will work on integrating national and international partners into U.S. anti-corruption diplomacy and foreign assistance efforts.⁵⁹ It remains to be seen how the new Coordinator's efforts will impact FCPA prosecutions moving forward.

⁵¹ See Press Release, Attorney General Announces Initiatives to Combat Human Smuggling and Trafficking and to Fight Corruption in Central America U.S. DEP'T. OF JUST. (June 7, 2021), <https://www.justice.gov/opa/pr/attorney-general-announces-initiatives-combat-human-smuggling-and-trafficking-and-fight>.

⁵² See Mary Beth Sheridan, *How U.S. Apathy Helped Kill a Pioneering Anti-Corruption Campaign in Guatemala*, WASH. POST (June 14, 2019), https://www.washingtonpost.com/world/the_americas/how-us-apathy-helped-kill-a-pioneering-anticorruption-campaign-in-guatemala/2019/06/14/cc4f464a-1e5e-11e9-a759-2b8541bbbe20_story.html.

⁵³ See Tiziano Breda, *Curtain Falls on Guatemala's International Commission against Impunity*, INT'L CRISIS GRP. (Sept. 3, 2019), <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/curtain-falls-guatemalas-international-commission-against-impunity>; see also Héctor Silvia Ávalos, *Ambiguous US Response Leaves Guatemala Justice in Limbo*, INSIGHT CRIM. (Sept. 6, 2018), <https://insightcrime.org/news/analysis/ambiguous-us-response-leaves-guatemala-justice-limbo/>.

⁵⁴ See PETER J. MEYER, CONG. RSCH. SERV., IN11211, CORRUPTION IN HONDURAS: END OF THE MISSION TO SUPPORT THE FIGHT AGAINST CORRUPTION AND IMPUNITY IN HONDURAS (MACCIH), (2020), <https://www.justice.gov/eoir/page/file/1248036/download>.

⁵⁵ See Miguel Zamora, *Institutional Inoculation: The International Commission Against Impunity in Guatemala (CICIG), International Rule of Law Mechanisms, and Creating Institutional Legitimacy in Post-Conflict Societies*, 57 COLUM. J. TRANSNAT'L L. 535 (2019).

⁵⁶ See Department Press Briefing, Jalina Porter, Principal Deputy Spokesperson, U.S. Dep't. of State (July 27, 2021), <https://www.state.gov/briefings/departments-press-briefing-july-27-2021/>.

⁵⁷ See Press Statement, Anthony J. Blinken, U.S. Sec'y of State, United States Announces Actions Against Seven Central American Officials for Undermining Democracy and Obstructing Investigations into Acts of Corruption (Sept. 20, 2021), <https://www.state.gov/united-states-announces-actions-against-seven-central-american-officials-for-undermining-democracy-and-obstructing-investigations-into-acts-of-corruption/>.

⁵⁸ See Press Release, Justice Department Anticorruption Task Force Launches New Measures to Combat Corruption in Central America, U.S. DEP'T. OF JUST. (Oct. 15, 2021), <https://www.justice.gov/opa/pr/justice-department-anticorruption-task-force-launches-new-measures-combat-corruption-central>.

⁵⁹ See Press Statement, Anthony J. Blinken, U.S. Sec'y of State, Elevating Anti-Corruption Leadership and Promoting Accountability for Corrupt Actors (Dec. 9, 2021), <https://www.state.gov/elevating-anti-corruption-leadership-and-promoting-accountability-for-corrupt-actors/>.

Corporate Compliance Monitors

As in 2020, U.S. authorities imposed no corporate compliance monitors or compliance consultants in FCPA cases in 2021, as reflected in the chart below.⁶⁰ One company that reached a resolution in 2021, Deutsche Bank, had already been under a compliance monitorship since 2015 in connection with its manipulation of the London Interbank Offered Rate. Another company that reached a resolution in 2021, Amec Foster Wheeler Energy Ltd., agreed to periodic compliance reporting and was deemed not to require a monitorship. In contrast to 2020, and despite the fact that all four of the entities subject to corporate enforcement actions in 2021 were non-U.S. companies, U.S. authorities did not note the existence of oversight by foreign authorities as a reason to decline to impose a compliance monitor.



COMPLIANCE OVERSIGHT IN CORPORATE FCPA RESOLUTIONS, 2017–2021

Three companies continue to have active monitorships as part of a prior criminal resolution with the DOJ Fraud Section’s FCPA Unit (Telefonaktiebolaget LM Ericsson, 2020; Mobile TeleSystems PJSC, 2019; and Fresenius Medical Care AG & Co. KGaA, 2019).⁶¹ Deutsche Bank AG, which resolved FCPA charges in 2021, is currently subject to a monitorship and has been since 2016; however, that monitorship stems from an enforcement action resolved with the DOJ Fraud Section’s Market Integrity and Major Frauds Unit.

⁶⁰ Monitors and consultants imposed in corporate resolutions are counted based on a variety of considerations. If the resolution involves both a parent and a subsidiary and/or both the DOJ and the SEC, whether more than one monitor/consultant is counted depends upon whether one individual appears to be serving in multiple capacities or multiple individuals appear to be serving in different capacities. This analysis is based upon the corporate resolution documents and, if necessary, third-party resources.

⁶¹ See Monitorships: List of Independent Compliance Monitors for Active Fraud Section Monitorships, U.S. DEP’T OF JUST., <https://www.justice.gov/criminal-fraud/strategy-policy-and-training-unit/monitorships> (last updated Nov. 4, 2021).

Review of Select Corporate Resolutions

In 2021, the DOJ and SEC resolved a combined six corporate enforcement actions. We summarize below the resolutions from the past year.

Credit Suisse Group AG

On October 19, 2021, as part of an international resolution with authorities in the United States, the United Kingdom, and Switzerland, the SEC announced that Credit Suisse Group AG (“Credit Suisse”), a Switzerland-based global investment bank and financial services firm with stock traded on the New York Stock Exchange, had agreed to pay combined penalties of nearly \$475 million to resolve allegations of violating the FCPA’s internal accounting controls and books and records provisions and fraudulently misleading investors.⁶² The SEC required payment of approximately \$100 million to resolve FCPA and other securities laws violations. The SEC payment was made up of a \$65 million civil penalty, disgorgement of \$26.2 million, and prejudgment interest of \$7.8 million.⁶³ On the same day, Credit Suisse resolved a parallel investigation conducted by the DOJ. The DOJ did not bring any FCPA charges. Instead, Credit Suisse’s subsidiary, Credit Suisse Securities (Europe) Limited (“CSSEL”), pleaded guilty to a criminal count of conspiracy to commit wire fraud in connection with the alleged fraudulent scheme and Credit Suisse entered into a three-year DPA with the DOJ in connection with a criminal information charging Credit Suisse with conspiracy to commit wire fraud.⁶⁴ The DOJ imposed an approximately \$247.5 million criminal penalty to resolve the conspiracy charges. Switzerland’s Financial Market Supervisory Authority also appointed an independent third party to review the implementation and effectiveness of Credit Suisse’s compliance measures conducted in financially weak and high-risk countries.⁶⁵

The FCPA violations arose out of a scheme involving two bond offerings and a syndicated loan that raised over \$1 billion on behalf of state-owned entities in Mozambique. Those financial instruments were used to perpetrate a hidden debt scheme, pay kickbacks to now-indicted Credit Suisse investment bankers and their intermediaries, and bribe government officials in Mozambique.⁶⁶ The syndicated loan was made to ProIndicus, a company owned and controlled by the government of Mozambique and ostensibly established to supply vessels and training to protect the country’s coastline and marine interests. According to the SEC consent order, the proceeds from this loan were meant exclusively for a maritime security project known as the “Exclusive Economic Zone.” However, ProIndicus was set up by Mozambican government officials in collusion with an agent of an intermediary based in the United Arab Emirates in order to divert approximately \$200 million over three years in kickbacks to three Credit Suisse bankers at CSSEL, payments to the intermediary agent, and in bribes to Mozambican government officials.⁶⁷ These improper payments were hidden from other members of Credit Suisse management and were not properly recorded in Credit Suisse’s books and records. Moreover, Credit Suisse transferred all proceeds directly to accounts controlled by the intermediary agent in Abu Dhabi rather than to the borrower in Mozambique, despite being aware of allegations of corrupt practices by the intermediary agent. Indeed, Credit Suisse’s financial crime compliance group received a third-party due diligence report that described the intermediary agent as a “master of kickbacks” and “an expert in kickbacks, bribery and corruption,” and a Credit Suisse director in the company’s Europe, Middle East, and Asia group warned that the intermediary agent had been “obviously involved in corrupt practices” in the past.

⁶² See *In re Credit Suisse Grp. AG*, Securities Act Release No. 11001 (Oct. 19, 2021), <https://www.sec.gov/litigation/admin/2021/33-11001.pdf> [hereinafter, “Securities Act Release No. 11001”]; Press Release, U.S. Sec. & Exch. Comm’n, *Credit Suisse to Pay Nearly \$475 Million to U.S. and U.K. Authorities to Resolve Charges in Connection with Mozambican Bond Offerings* (Oct. 19, 2021), <https://www.sec.gov/news/press-release/2021-213>.

⁶³ Securities Act Release No. 11001, §§ IV(B)-(C).

⁶⁴ See Deferred Prosecution Agreement, *United States v. Credit Suisse Grp. AG*, No. 21-CR-521 (E.D.N.Y. Oct. 19, 2021), <https://www.justice.gov/opa/press-release/file/1444991/download>; Press Release, U.S. Dep’t of Just., *Credit Suisse Resolves Fraudulent Mozambique Loan Case in \$547 Million Coordinated Global Resolution* (Oct. 19, 2021), <https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global> [hereinafter, “DOJ Credit Suisse Press Release”].

⁶⁵ See DOJ Credit Suisse Press Release.

⁶⁶ See Securities Act Release No. 11001 ¶¶ 1–7.

⁶⁷ See Securities Act Release No. 11001 ¶¶ 9–11.

A second transaction involved Credit Suisse's underwriting interest-bearing loan participation notes issued by EMATUM, a newly formed tuna-fishing entity owned and controlled by the government of Mozambique. As was the case in the ProIndicus scheme, EMATUM was used to divert proceeds to the Credit Suisse bankers and make improper payments to government officials through the UAE intermediary, including transferring all proceeds to the intermediary agent's Abu Dhabi accounts.⁶⁸ According to the consent order, Credit Suisse's books and records did not show that a large amount of the proceeds of these transactions were improper payments to government officials in Mozambique or kickbacks to the Credit Suisse bankers.⁶⁹ The SEC also found that the scheme went unnoticed due to Credit Suisse's deficient internal accounting controls, including that Credit Suisse's reputational risk, credit risk, and compliance groups failed to appreciate the gravity of the bribery risks that came to their attention, and that Credit Suisse placed an unreasonable reliance on the bankers who allegedly received the kickbacks to structure the deals, all of which allowed the bankers to carry out the bribery scheme.⁷⁰

WPP plc

On September 24, 2021, the SEC announced that it had resolved charges against WPP plc ("WPP"), a U.K.-based global advertising firm with shares listed on the New York Stock Exchange, for violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA.⁷¹ Without admitting or denying the SEC's findings, WPP agreed to pay an \$8 million penalty, \$10.1 million in disgorgement, and \$1.1 million in prejudgment interest.⁷²

The FCPA violations arose out of conduct by WPP majority-owned subsidiaries in India, China, Brazil, and Peru. Until 2018, WPP had implemented an aggressive expansion strategy driven through acquisitions in high-risk markets. WPP structured these acquisitions to keep the local founders as CEOs of the acquired entities, but nonetheless centrally coordinated back-office functions. Despite its expansion into high-risk markets, WPP did not have a compliance department and lacked meaningful coordination between its legal and internal audit departments and these acquired entities. Thus, the SEC found that WPP failed to implement sufficient internal accounting controls across its international network, leading to inadequate oversight of the acquired entities and failure to respond adequately to warning signs of corruption or lack of controls at the acquired entities.⁷³

The SEC highlighted specific instances of improper payments in each of India, China, Brazil, and Peru, all associated with founder-controlled local acquisitions. In India, a WPP subsidiary allegedly used two vendors that facilitated bribe payments to officials at the Departments of Information and Public Relations of two Indian states, as well as paid kickbacks to the subsidiary's CEO.⁷⁴ In China, a WPP subsidiary avoided paying over \$3 million in taxes to a Chinese tax authority by making payments to a vendor identified by tax officials and gifting \$2,000 worth of items and entertainment to tax officials. The Chinese subsidiary also maintained an off-the-books account reflecting the payments to the vendor recommended by the tax officials.⁷⁵ In Brazil, a WPP subsidiary made improper payments to vendors in order to secure government contracts at the subsidiary CEO's direction. These improper payments were made despite WPP's policy prohibiting its subsidiaries from paying third parties to assist in obtaining or retaining government contracts without WPP's approval.⁷⁶ In Peru, the WPP subsidiary's CEO directed the subsidiary to be a conduit for a construction company's illicit payments to the mayor of Lima in support of his political campaign. The CEO disguised the corrupt source of the funds used for the bribe of the mayor by funneling the construction company's payments to the Peruvian subsidiary through WPP subsidiaries in Colombia and Chile. This caused the Columbian and Chilean

⁶⁸ See Securities Act Release No. 11001 ¶¶ 21–22.

⁶⁹ See Securities Act Release No. 11001 ¶ 65.

⁷⁰ See Securities Act Release No. 11001 ¶¶ 15, 25.

⁷¹ See *In re WPP PLC*, Exchange Act Release No. 93117 (Sept. 24, 2021), <https://www.sec.gov/litigation/admin/2021/34-93117.pdf> [hereinafter "Exchange Act Release No. 93117"]; Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges World's Largest Advertising Group with FCPA Violations* (Sept. 24, 2021), <https://www.sec.gov/news/press-release/2021-191>.

⁷² See Exchange Act Release No. 93117 Section IV(B).

⁷³ See Exchange Act Release No. 93117 ¶¶ 4–7.

⁷⁴ See Exchange Act Release No. 93117 ¶¶ 8–20.

⁷⁵ See Exchange Act Release No. 93117 ¶ 22.

⁷⁶ See Exchange Act Release No. 93117 ¶ 27.

subsidiaries to falsely record payments in return for services performed for the construction company. The Peruvian subsidiary maintained no records showing that the construction company paid for a portion of the mayor of Lima's political campaigns.⁷⁷

Amec Foster Wheeler Limited

On June 25, 2021, the DOJ and SEC announced resolutions with Amec Foster Wheeler Limited ("Foster Wheeler"), a subsidiary of John Wood Group plc, a U.K.-based global engineering company, for violations of the FCPA's anti-bribery, books and records, and internal accounting control provisions.⁷⁸ The SEC and DOJ resolutions were part of coordinated resolutions with authorities in the United Kingdom and Brazil.⁷⁹ Foster Wheeler agreed to pay over \$41 million to resolve charges by the DOJ and SEC.⁸⁰ To settle bribery, books and records, and internal controls charges with the SEC, Foster Wheeler agreed to pay \$22.8 million, consisting of disgorgement of \$17.7 million and prejudgment interest of \$5.1 million. Foster Wheeler also entered into a three-year DPA with the DOJ for one count of conspiracy to violate the anti-bribery provisions of the FCPA, agreed to pay approximately \$18.4 million in penalties, and agreed to self-report periodically to the Fraud Section of the DOJ.⁸¹ Foster Wheeler received credit from the SEC and DOJ for up to \$9.1 million in disgorgement and \$6.1 million in other payments to Brazilian authorities, and up to \$3.5 million in disgorgement and \$4.5 million in other payments to authorities in the United Kingdom.⁸²

This resolution resulted from a scheme to bribe officials in Brazil in exchange for a \$190 million contract from Petroleo Brasileiro S.A. ("Petrobras"), Brazil's state-owned oil company, to engineer and design a gas-to-chemicals complex. Foster Wheeler's U.K. subsidiary, Foster Wheeler Energy Limited ("FWEL"), bid on the contract and paid fees to an Italian agent and a Brazilian agent, a portion of which was used by the agents to pay bribes to a Petrobras official to obtain confidential information that would help Foster Wheeler win the contract bid and negotiate favorable terms.⁸³ The improper payments were wired through a U.S. correspondent account and facilitated through a *doleiro*—a money launderer—and were ultimately falsely recorded as "commissions" in Foster Wheeler's books and records.⁸⁴ Importantly, Foster Wheeler paid the Italian agent through a Monaco intermediary company, despite the fact that Foster Wheeler had declined to engage the Monaco intermediary company because of red flags elevated through its due diligence process. The SEC noted that members of Foster Wheeler's senior management—including its general counsel, chief compliance officer, and acting CEO—were aware of the adverse due diligence report. FWEL's general counsel also violated Foster Wheeler's policy on outside agents by temporarily engaging the Italian agent while due diligence was still pending. In further violation of policy, FWEL did not terminate the Italian agent's interim contract once Foster Wheeler decided not to engage the agent on the basis of a full due diligence review.⁸⁵

Deutsche Bank AG

On January 8, 2021, the SEC and DOJ announced that Deutsche Bank AG ("Deutsche Bank"), a Germany-based multinational investment bank and financial services company with shares listed on the New York Stock Exchange, agreed to pay approximately \$122.9 million to resolve FCPA charges stemming from bribes paid to officials in Saudi Arabia and Abu Dhabi and

⁷⁷ See Exchange Act Release No. 93117 ¶ 29.

⁷⁸ See *In re Amec Foster Wheeler Ltd.*, Exchange Act Release No. 92259 (June 25, 2021), <https://www.sec.gov/litigation/admin/2021/34-92259.pdf> [hereinafter "Exchange Act Release No. 92259"]; Press Release, SEC, *SEC Charges Amec Foster Wheeler Limited with FCPA Violations Related to Brazilian Bribery Scheme* (June 25, 2021), <https://www.sec.gov/news/press-release/2021-112> [hereinafter "SEC Foster Wheeler Press Release"]; Deferred Prosecution Agreement, *United States v. Amec Foster Wheeler Energy Ltd.*, No. 21-CR-298 (E.D.N.Y. June 25, 2021), <https://www.justice.gov/opa/press-release/file/1411296/download> [hereinafter, "Foster Wheeler DPA"]; Press Release, U.S. Dep't of Just, *Amec Foster Wheeler Energy Limited Agrees to Pay Over \$18 Million to Resolve Charges Related to Bribery Scheme in Brazil* (June 25, 2021), <https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery> [hereinafter "DOJ Foster Wheeler Press Release"].

⁷⁹ See DOJ Foster Wheeler Press Release, <https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery>.

⁸⁰ See SEC Foster Wheeler Press Release, <https://www.sec.gov/news/press-release/2021-112>.

⁸¹ See Foster Wheeler DPA, Attachment B, <https://www.justice.gov/opa/press-release/file/1411296/download>.

⁸² See Exchange Act Release No. 92259 Section IV(B), <https://www.sec.gov/litigation/admin/2021/34-92259.pdf>.

⁸³ See Exchange Act No. 92259 ¶ 15–17, 19.

⁸⁴ See Exchange Act No. 92259 ¶ 30.

⁸⁵ See Exchange Act No. 92259 ¶¶ 14–17.

falsely recording the corrupt payments in its books and records.⁸⁶ Deutsche Bank entered into a DPA with the DOJ and paid a \$79.6 million criminal penalty to resolve one count of conspiracy to violate the books and records and internal controls provisions of the FCPA. It paid an additional \$43.3 million in connection with a SEC resolution concerning books and records violations, which included disgorgement of \$35.1 million and prejudgment interest of approximately \$8.2 million. The SEC declined to level civil penalties given the imposition of a criminal penalty for the same conduct.⁸⁷ In addition to resolving FCPA violations, Deutsche Bank also resolved DOJ charges of wire fraud relating to unlawful commodities trading activity, paying an additional \$7.5 million.⁸⁸

According to the SEC consent order, the FCPA charges arose from activity spanning from 2009 through 2016 in which Deutsche Bank improperly made use of third-party intermediaries, business development consultants, and finders (collectively, “BDCs”) to obtain and retain business. Among these Chinese, Emirati, Italian, and Saudi BDCs were foreign officials, their relatives, and their associates. Although Deutsche Bank had a policy in place for screening and approval of BDCs, the implementation and oversight of the policy fell to “business sponsors” whose remuneration was tied to their business development. These business sponsors recommended engagements and determined the compliance of payments to BDCs. Despite multiple internal reviews recommending revisions to the BDC policy to address these shortcomings, management took only limited remedial steps. As a result, the SEC alleged that bribery risks were not properly assessed and sufficient steps were not taken to mitigate those risks. The SEC alleged that, due to a lack of internal controls, BDCs were engaged without proper due diligence, their invoices were vague and inaccurate, BDCs were paid in excess of what was provided for in their respective contracts, and some BDCs received payment from Deutsche Bank even though they had no contract with Deutsche Bank at the time services were purportedly performed. Some of these payments were allegedly bribes.⁸⁹ According to the criminal information filed by the DOJ, Deutsche Bank conspired to maintain false books, records, and accounts by concealing bribes paid to a client’s decision-maker in Saudi Arabia to retain that client’s business by recording the payment as “referral fees” paid to a BDC and concealing payments to an intermediary acting as a proxy for a foreign official in Abu Dhabi by recording the payments as “consultancy” payments to a BDC.⁹⁰ In addition to the conduct in the UAE and Saudi Arabia, the SEC further alleged that Deutsche Bank retained a “senior advisor” to the Chinese government and a regional tax judge in Italy as BDCs without conducting proper diligence.⁹¹

⁸⁶ See Press Release, U.S. Sec. & Exch. Comm’n, *SEC Charges Deutsche Bank with FCPA Violations Related to Third-Party Intermediaries* (Jan. 8, 2021), <https://www.sec.gov/news/press-release/2021-3>; Press Release, U.S. Dep’t of Just., *Deutsche Bank Agrees to Pay over \$130 Million to Resolve Foreign Corrupt Practices Act and Fraud Case* (Jan. 8, 2021), <https://www.justice.gov/opa/pr/deutsche-bank-agrees-pay-over-130-million-resolve-foreign-corrupt-practices-act-and-fraud>.

⁸⁷ See *In re Deutsche Bank AG*, Exchange Act No. 90875 (Jan. 8, 2021), <https://www.sec.gov/litigation/admin/2021/34-90875.pdf>. [hereinafter “Exchange Act No. 90875”]; Deferred Prosecution Agreement, *United States v. Deutsche Bank AG*, No. 20-CR-584 (E.D.N.Y. Jan. 8, 2021), <https://www.justice.gov/opa/press-release/file/1360741/download> [hereinafter, “Deutsche Bank DPA”].

⁸⁸ See Deutsche Bank DPA, <https://www.justice.gov/opa/press-release/file/1360741/download>.

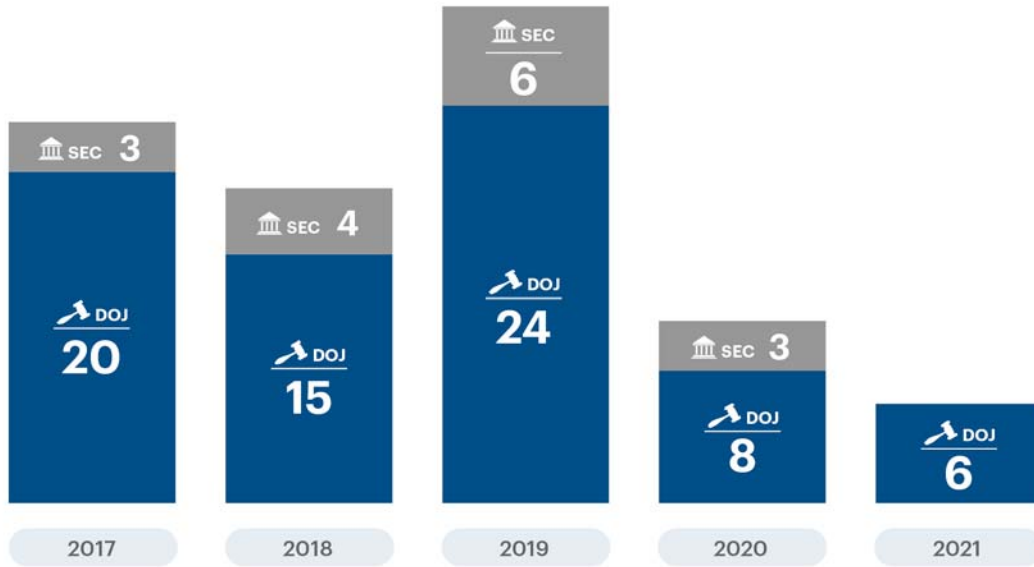
⁸⁹ See Exchange Act Release No. 93117.

⁹⁰ See Information, *United States v. Deutsche Bank AG*, No. 20-CR-584 (E.D.N.Y. Jan. 8, 2021), <https://www.justice.gov/opa/press-release/file/1351746/download>.

⁹¹ See Exchange Act Release No. 93117.

Enforcement Actions Against Individuals

Based on publicly filed charging instruments, as reflected below, in 2021, the DOJ brought criminal FCPA charges against six individuals and the SEC brought no civil actions against individuals.⁹² The DOJ has continued to emphasize individual enforcement activity, with Deputy Attorney General Lisa Monaco highlighting that “the priority remains individual accountability,”⁹³ and, as in recent years, in 2021, the DOJ was more active than the SEC in bringing FCPA actions against individuals. Nevertheless, the number of individual prosecutions brought by the DOJ under the FCPA in 2021 was lower than in 2020, continuing a downward trend.



FCPA INDIVIDUAL ENFORCEMENT ACTIONS, 2017–2021

In 2021, criminal FCPA charges were unsealed against three individuals.⁹⁴ One individual (Afework Bereket) was charged as part of an investigation into alleged corrupt practices by Ericsson. According to the indictment, between 2010 and 2014, Bereket served as an account manager for Ericsson Egypt Limited, a subsidiary that oversaw Ericsson’s operations in North East Africa. In December 2019, Ericsson agreed to pay penalties worth over \$1 billion to resolve DOJ and SEC investigations into FCPA violations arising out of the company’s conduct in Djibouti, China, Vietnam, Indonesia and Kuwait.⁹⁵ Thereafter, in June 2020, the DOJ charged Bereket with one count of conspiracy to violate the FCPA and one count of conspiracy to commit money laundering.⁹⁶ Bereket was charged in connection with allegations that he entered into a false contract with a consulting company, caused an Ericsson entity to approve fake invoices, and prepared a false due diligence report to conceal \$2.1 million in bribes paid to two high-ranking officials in Djibouti’s executive branch and a high-level executive at Djibouti’s state-owned telecommunications

⁹² Included in these totals are individual prosecutions and enforcement actions for FCPA charges, but not for other charges, such as money laundering or racketeering. Actions are listed in the year of the initial filing of FCPA charges, even if unsealed in a later year, which may result in changes to the totals for past years, as indictments from past years are unsealed.

⁹³ See, e.g., Lisa O. Monaco, Deputy Att’y Gen., U.S. Dep’t of Just., *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>.

⁹⁴ See Order to Unseal Indictment, *U.S. v. Bereket*, No. 1:20-cr-00283 (S.D.N.Y. Sept. 8, 2021); Minute Order to Unseal Case, *U.S. v. Tyab, et al.*, No. 1:19-cr-00038 (D.D.C. May 20, 2021).

⁹⁵ See Press Release, U.S. Dep’t of Just., *Ericsson Agrees to Pay Over \$1 Billion to Resolve FCPA Case* (Dec. 6, 2020), <https://www.justice.gov/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case>.

⁹⁶ See Indictment, *U.S. v. Bereket*, No. 1:20-cr-00283 (S.D.N.Y. June 3, 2020).

company in exchange for a contract valued at approximately \$23 million. Bereket remains at large, and the charges remain pending.⁹⁷

Six individuals pleaded guilty to FCPA charges in 2021.⁹⁸ Among these individuals was Anthony Stimler, a U.K. citizen and resident who was a trader at Glencore PLC, the Anglo-Swiss multinational commodity trading and mining company. Stimler pleaded guilty to one count of conspiring to violate the FCPA's anti-bribery provisions and one count of conspiring to commit money laundering.⁹⁹ According to the criminal information to which he pleaded guilty, Stimler paid "millions of U.S. dollars" in bribes to Nigerian government officials through intermediary companies in Nigeria and Cyprus to secure oil cargoes from the Nigerian National Petroleum Corporation.¹⁰⁰ According to the plea hearing transcript, although Stimler is a foreign national, prosecutors intended to prove that Stimler exchanged emails from the United States with other co-conspirators using coded language, such as references to "newspapers" and "filings," to describe bribe payments to foreign officials in Nigeria.¹⁰¹ Prosecutors also possessed bank records showing wire transfers from bank accounts maintained in Switzerland to bank accounts maintained by co-conspirators in Nigeria and through correspondent bank accounts maintained in New York.¹⁰² Stimler's sentencing is set for January 2022.

Two individuals settled civil FCPA charges with the SEC in 2021.¹⁰³ One individual (Joel Frank) reached a settlement stemming from a 2016 FCPA resolution between the SEC and Och-Ziff Capital Management Group LLC ("Och-Ziff"), a New York-based alternative investment and hedge fund manager. According to the SEC's order, between 2007 and 2011, Och-Ziff entered into seven relationships and investments in which Och-Ziff used investor funds to make corrupt payments to government officials in Libya and several other African nations in order to induce investments in Och-Ziff managed funds. Och-Ziff recorded these improper payments as investments, loans, "deal fees," "subscription amounts," payments to business partners and agents, or "professional services fees."¹⁰⁴ Although Frank, the former chief financial officer of Och-Ziff, was not aware of the bribe payments, Frank had final signing authority and he approved the payments being made. Without admitting or denying the SEC's findings, Frank agreed to pay a \$35,000 civil monetary penalty.¹⁰⁵

Looking forward, FCPA trials against four individuals are scheduled to commence in 2022.¹⁰⁶

⁹⁷ See Press Release, U.S. Dep't of Just., *Former Ericsson Employee Charged for Role in Foreign Bribery Scheme* (Sept. 8, 2021), <https://www.justice.gov/opa/pr/former-ericsson-employee-charged-role-foreign-bribery-scheme>.

⁹⁸ See Press Release, U.S. Dep't of Just., *Texas Woman Pleads Guilty to Schemes to Procure Adoptions from Uganda and Poland through Bribery and Fraud* (Nov. 17, 2021), <https://www.justice.gov/opa/pr/texas-woman-pleads-guilty-schemes-procure-adoptions-uganda-and-poland-through-bribery-and-fraud>; Press Release, U.S. Dep't of Just., *Former Chief Executive Officer of Petrochemical Company Sentenced to 20 Months in Prison for Foreign Bribery Scheme* (Oct. 12, 2021), <https://www.justice.gov/opa/pr/former-chief-executive-officer-petrochemical-company-sentenced-20-months-prison-foreign>; *United States v. Cushmore, Jr.*, No. 2:21-cr-00455 (W.D. Pa. Nov. 17, 2021), ECF No. 17; *United States v. Stimler*, No. 1:21-cr-00471 (S.D.N.Y. July 26, 2021), ECF No. 4; *United States v. Berkman*, No. 0:21-cr-60255 (S.D. Fla. Oct. 4, 2021), ECF No. 78; *United States v. Lichtenfeld*, No. 0:21-cr-60256 (S.D. Fla. Oct. 4, 2021), ECF No. 75.

⁹⁹ See Plea Hr'g Tr., *United States v. Stimler*, No. 1:21-cr-00471 (S.D.N.Y. Sept. 8, 2021), ECF No.18.

¹⁰⁰ See Information, *United States v. Stimler*, No. 1:21-cr-00471 (S.D.N.Y. July 26, 2021).

¹⁰¹ See Plea Hr'g Tr. at 15-16, *United States v. Stimler*, No. 1:21-cr-00471 (S.D.N.Y. Sept. 8, 2021), ECF No.18; Information at 8, *United States v. Stimler*, No. 1:21-cr-00471 (S.D.N.Y. July 26, 2021).

¹⁰² See Plea Hr'g Tr. at 15-16, *United States v. Stimler*, No. 1:21-cr-00471 (S.D.N.Y. Sept. 8, 2021), ECF No.18.

¹⁰³ See Final Judgment, *U.S. Sec. & Exch. Comm'n v. Berko*, No. 1:20-cv-01789 (E.D.N.Y. June 23, 2021); *In the Matter of Joel M. Frank*, Exchange Act Release No. 91337 (Mar. 16, 2021), <https://www.sec.gov/litigation/admin/2021/34-91337.pdf>.

¹⁰⁴ *In the Matter of Joel M. Frank*, Exchange Act Release No. 91337 at 3 (Mar. 16, 2021), <https://www.sec.gov/litigation/admin/2021/34-91337.pdf>.

¹⁰⁵ *Id.* at 1, 4.

¹⁰⁶ *U.S. v. Wakil*, No. 21-cr-20406 (S.D. Fla.); *United States v. Ng Chong Hwa*, No. 18-cr-538 (E.D.N.Y.); *United States v. Coburn*, No. 19-cr-120 (D.N.J.).

Legal Developments Affecting Enforcement Tools

In 2021, significant legal developments continued to affect the DOJ's and SEC's tools for enforcing the FCPA and resolving cases. *First*, in *U.S. v. Rafoi-Bleuler*, the United States District Court for the Southern District of Texas continued a growing trend of U.S. courts limiting the FCPA's extraterritorial reach by overturning a foreign national's FCPA conviction. *Second*, the United States District Court for the Eastern District of New York provided an in-depth analysis of the FCPA's internal accounting controls in a 160-page opinion issued in *U.S. v. Ng Chong Hwa*. These legal developments and their potential implications are discussed below.

United States v. Rafoi-Bleuler

On November 12, 2021, the U.S. District Court for the Southern District of Texas called into question the constitutionality of the term "agent" as applied by the DOJ and dismissed all criminal charges against Daisy Teresa Rafoi-Bleuler, a Swiss asset manager indicted in 2019 in connection with an alleged scheme to pay bribes to officials at PDVSA.¹⁰⁷ The DOJ had charged Rafoi-Bleuler with one count each of conspiracy to violate the FCPA's anti-bribery provisions, conspiracy to commit money laundering, and money laundering. According to the DOJ, Rafoi-Bleuler participated in a kickback scheme in which PDVSA officials took bribes in exchange for awarding contracts and preferred treatment in the order that invoices were paid.¹⁰⁸ The DOJ alleged that Rafoi-Bleuler provided her co-conspirators with financial services through her Swiss wealth management company to hide the scheme's ill-gotten gains and that she acted as an agent for a domestic concern because she assisted a group of U.S. businessmen in laundering and concealing the proceeds of the scheme.¹⁰⁹

In a motion to dismiss the indictment, Rafoi-Bleuler argued that the DOJ lacked jurisdiction to prosecute her because the indictment did not allege any conduct by her within the United States, that all services provided by her firm on behalf of her co-defendants were provided as professional services and not pursuant to an agency relationship, and that the term "agent" as applied by the DOJ is so vague that it would violate her constitutional due process rights.¹¹⁰ The district court agreed with Rafoi-Bleuler and ruled that prosecutors lacked jurisdiction to prosecute her under the FCPA. In its ruling, the court found that, as enacted by Congress, the FCPA does not apply extraterritorially to a foreign national who has neither committed part of the crime in the U.S. nor acted as an officer, director, employee, or agent of a domestic concern.¹¹¹ The court held that agency cannot merely be alleged but rather "raises a question of law" that must be established "with direct or undisputed evidence," which the DOJ failed to do in this case.¹¹² The court also found merit in Rafoi-Bleuler's argument that the term "agent" was too vague, given that "no court has interpreted the statute or rendered a judicial decision that fairly discloses the manner in which the term may be applied to establish jurisdiction."¹¹³ Thus, the court dismissed all counts against Rafoi-Bleuler for lack of jurisdiction.

On December 7, 2021, the DOJ filed its notice of appeal with the Fifth Circuit. Joseph Beemsterboer, acting chief of the DOJ's Fraud Section, stated that, despite the ruling, the DOJ will continue "to use all viable charging theories" to hold individuals accountable, "no matter where they are located."¹¹⁴ The DOJ's determination to pursue broad interpretation of its jurisdictional reach is also apparent in *United States v. Hoskins*, where in August 2021 prosecutors urged the Second Circuit to reverse a Connecticut federal judge's finding that acquitted Lawrence Hoskins, a British national, on FCPA charges as a result of the DOJ's failure to prove at trial that Hoskins was an agent of the company's U.S. subsidiary, Alstom Power Inc.¹¹⁵ A three-judge panel for the Second Circuit heard oral argument on the DOJ's appeal and a decision is pending. Nevertheless, both *Rafoi-Bleuler* and

¹⁰⁷ Memorandum Opinion and Order, *United States v. Rafoi-Bleuler*, No. 4:17-cr-00514 (S.D. Tex. Nov. 12, 2021).

¹⁰⁸ *Id.* at 3-4.

¹⁰⁹ *Id.* at 7-8.

¹¹⁰ *Id.* at 6.

¹¹¹ *Id.* at 14.

¹¹² *Id.*

¹¹³ *Id.* at 21-22.

¹¹⁴ Joe Beemsterboer, Acting Chief, Fraud Section, U.S. Dep't of Just., *Remarks at the ACI 38th Annual Conference on the FCPA* (Dec. 1, 2021).

¹¹⁵ Stewart Bishop, *Feds Tell 2nd Circ. Alstom Exec's FCPA Acquittal Was Faulty*, LAW360 (Aug. 17, 2021), <https://www.law360.com/articles/1413592/feds-tell-2nd-circ-alstom-exec-s-fcpa-acquittal-was-faulty>.

Hoskins join a growing number of precedents that elevate the standard under which the government must establish jurisdiction under the FCPA, whether by location of the act or the definition of “agency” when conduct occurs outside the U.S.

United States v. Ng Chong Hwa

On September 10, 2021, in a 160-page opinion, the U.S. District Court for the Eastern District of New York denied a motion filed by Ng Chong Hwa, also known as Roger Ng, a former managing director of various subsidiaries of the Goldman Sachs Group, to dismiss FCPA and money laundering charges stemming from a purported \$2.7 billion fraud involving bond transactions from 1MDB.¹¹⁶ With respect to a charge of violating the FCPA’s internal accounting controls provision, Ng asserted that the DOJ’s allegations related to bribes paid from assets belonging to 1MDB and therefore had nothing to do with the Goldman Sachs Group’s internal accounting controls, as Goldman did not itself engage in any transaction related to the bribes that should have been recorded on a financial statement related to Goldman’s assets.¹¹⁷ Ng further argued that the DOJ failed to identify any internal “accounting” control that was violated, instead identifying the compliance and legal groups within the Goldman Sachs Group as internal controls, even though they are not “accounting related.”¹¹⁸ According to Ng, the DOJ “may have [identified] a compliance issue, but it was certainly not an internal accounting issue.”¹¹⁹ Ng then argued that, even if the court found the internal accounting controls provision could still apply, the broad application of the law—expanding the internal accounting controls provision to include non-accounting-related compliance controls—would cause the provision to be unconstitutionally vague as applied to Ng.

The court rejected Ng’s arguments. In so doing, the court concluded that the FCPA’s plain language focuses on “transactions” not “assets,” and that the DOJ sufficiently pleaded that the Goldman Sachs Group’s internal accounting controls were implicated by the transactions at issue—the improper purchase of 1MDB bonds underwritten by Goldman.¹²⁰ The court further noted that Ng’s “suggestion that the circumvention of internal accounting controls must be attended by the falsification of an accounting document appears to conflate the ‘books and records’ provision of the FCPA with the ‘internal accounting controls’ provision.” The court next found that, in the criminal context, whether the controls at issue are internal “accounting” controls within the context of the FCPA is a matter for a jury to decide.¹²¹ With respect to Ng’s void-for-vagueness argument, the court found that the relevant “transactions” are the Goldman Sachs Group’s purchase of the 1MDB bonds, which the DOJ alleges would not have been authorized by the company’s compliance groups that enforce its internal accounting controls had Ng not concealed the 1MDB bribery scheme. Thus, the court held that the FCPA’s internal accounting controls provision gave sufficient notice to Ng that his alleged concealment was related to the underwriting of the bond deals.

Ng also argued that the indictment should be dismissed for lack of venue because “electronic transmissions of three wire transactions and two phone calls [that] passed below New York harbor” were not sufficient allegations to confer venue.¹²² The court held that, as a matter of law, venue is proper in any district where electronic communications are sent or received, and in any district through which electronic communications are routed. Thus, the DOJ’s general allegations were sufficient to support venue at the motion to dismiss stage.

Although the court’s opinion does not set new precedent or redefine how the FCPA should be construed, it is nevertheless notable for its in-depth analysis of the FCPA’s internal accounting controls provisions. Jury selection in Ng’s trial is set to begin on February 7, 2022.

¹¹⁶ See Memorandum & Order, *United States v. Ng Chong Hwa*, No. 18-cr-538 (E.D.N.Y. Sept. 10, 2021) [hereinafter, “Ng Opinion”].

¹¹⁷ Ng’s Memorandum in Support of Motion to Dismiss at 44–55, *United States v. Ng Chong Hwa*, No. 18-cr-538 (E.D.N.Y. Sept. 10, 2021).

¹¹⁸ *Id.* at 49.

¹¹⁹ *Id.* at 48.

¹²⁰ Ng Opinion at 63-64.

¹²¹ *Id.* at 65.

¹²² *Id.* at 41-49.

Foreign Jurisdictions Investigating and Prosecuting Corruption

In contrast to the relatively low level of enforcement activity in the United States, other countries took significant strides to investigate and prosecute corrupt actors. Authorities in numerous countries announced investigations and prosecutions of allegedly corrupt officials, and a startling number of current and former foreign government officials, including former heads of state, were convicted and sentenced in connection with corruption charges. Foreign authorities in several jurisdictions also continued to pursue corporate enforcement actions. In addition, a number of foreign jurisdictions acted to enhance their anti-corruption laws.

Africa

Abdelmoumene Ould Kaddour, the former chief of Sonatrach, Algeria's state oil and gas company, was extradited from the United Arab Emirates to **Algeria** to face trial in connection with corruption charges.¹²³ Algerian authorities have alleged that Ould Kaddour is involved in several corruption cases linked to deals signed by Sonatrach, including the purchase of the Augusta refinery in Italy from Exxon Mobil Corporation in 2018.

Asia

In **China**, Dong Hong, a former senior inspector in China's Central Commission for Discipline Inspection ("CCDI"), China's anti-bribery watchdog, was indicted by the Supreme People's Procuratorate on bribery charges.¹²⁴ Gao Fubo, the former chairman of the Jilin Province Trust Company, was sentenced to 20 years in prison, fined \$800,000 and had his assets confiscated for corruption, bribery and embezzlement between 2007 and 2015.¹²⁵ Separately, technology companies in China were implicated in various corruption investigations. Mao Taotao, the director of public relations at Weibo Corporation, a Chinese social media company, was arrested for alleged bribery.¹²⁶ Tencent Holdings Ltd., a Chinese multinational technology conglomerate company, fired more than 100 staff over embezzlement and bribery incidents following an anti-graft investigation conducted by the CCDI into Zhang Feng, a vice president of Tencent.¹²⁷

The Chinese government enacted two laws likely to impact how investigations are conducted and how companies may cooperate or share information with authorities outside China. *First*, the Data Security Law ("DSL"), effective as of September 1, 2021, outlines how domestic and foreign companies that collect data and have operations in China should manage their data.¹²⁸ The DSL classifies data according to its relevance to Chinese national security, with harsher punishments—including fines of up to \$1.5 million and criminal liability—for companies that mishandle "important data" and "national core data." Critically, the DSL prohibits any company that manages and stores data in China from transferring data across borders without the prior, explicit approval of Chinese government authorities. Both companies and individuals in breach of the DSL are subject to fines, suspension of business services, license revocation, and civil and criminal liability.

Second, the Personal Information Protection Law ("PIPL"), effective as of November 1, 2021, imposes broad safeguards for the protection of personal information and subjects domestic or foreign organizations that process personal information of China's

¹²³ See *Former Head of Algeria's Sonatrach to Face Trial Over Corruption*, REUTERS (Aug. 5, 20201), <https://www.reuters.com/world/middle-east/former-head-algerias-sonatrach-face-trial-over-corruption-2021-08-04/>.

¹²⁴ See Tom Mitchell, *Aide to Chinese Vice-President Faces Corruption Trial*, FIN. TIMES (June 10, 2021), <https://www.ft.com/content/4158f834-abe1-4cea-8267-7f6e503f338c>.

¹²⁵ See Wu Yujian & Han Wei, *Third Former Chairman of Jilin Trust Convicted of Bribery*, CAIXIN GLOB. (May 12, 2021), <https://www.caixinglobal.com/2021-05-12/third-former-chairman-of-jilin-trust-convicted-of-bribery-101709927.html>.

¹²⁶ See *Top Public Relations Director at Chinese Social Media Giant Weibo arrested*, REUTERS (Aug. 11, 2021), <https://www.reuters.com/technology/top-public-relations-director-chinese-social-media-giant-weibo-arrested-2021-08-10/>.

¹²⁷ See *Tencent Executive Held by China Over Links to Corruption Case*, WALL ST. J. (Feb. 10, 2021), <https://www.wsj.com/articles/tencent-executive-held-by-china-over-links-to-corruption-case-11613009016>; *Tencent Fires 100 employees, Blacklists 37 Firms in Anti-Graft Campaign*, REUTERS (Feb. 2, 2021), <https://www.reuters.com/article/us-tencent-corruption/tencent-fires-100-employees-blacklists-37-firms-in-anti-graft-campaign-idUSKBN2A30DW>.

¹²⁸ See Yvonne Lau, *Here's What Beijing's Wweeping New Data Rules Will Mean for Companies*, FORTUNE (Sept. 1, 2021), <https://fortune.com/2021/09/01/china-data-security-law-beijing-management-regulation-internet/>.

residents to heightened requirements.¹²⁹ PIPL's requirements include: (1) obtaining individuals' consent to process personal information; (2) addressing individuals' requests to exercise their rights over personal information; (3) implementing adequate safeguards and security measures to protect personal information; (4) adhering to limitations on cross-border transfers of personal information outside of China; (5) conducting Personal Information Protection Impact Assessments; and (6) supervising third-party processors to ensure compliance with PIPL. Failure to comply with PIPL's expanded privacy law may subject both domestic and foreign organizations to substantial regulatory fines and penalties, revocation of business licenses, and potentially personal liability for managers and executives.

In **Japan**, a Tokyo District Court sentenced Tsukasa Akimoto, a former vice-minister in charge of tourism and casino promotions, to four years in prison for taking nearly \$70,000 in bribes between September 2017 and February 2018 from 500.com, a Chinese gambling operator attempting to enter Japan's casino market.¹³⁰

Japan's Ministry of Economy, Trade and Industry ("METI") revised its Guidelines for the Prevention of Bribery of Foreign Public Officials.¹³¹ Among other changes, the revised guidelines clarify that the advantage given to an official can be provided on a person's own behalf or "on behalf of any other natural person or legal entity" and no longer imply that economic harm to a company could be used as a defense to a charge of foreign bribery.¹³² The revised Guidelines address long-standing concerns from the OECD's Working Group on Bribery regarding "the extremely low level of enforcement" of Japan's anti-corruption laws.¹³³

Europe and the Middle East

In **France**, former President Nicolas Sarkozy was found guilty of corruption charges for attempting to bribe a magistrate in an effort to obtain confidential information about a police inquiry into the finances of his 2007 campaign.¹³⁴ The Paris court sentenced Sarkozy to three years in prison, suspended for two years.

In **Italy**, a court acquitted Royal Dutch Shell PLC, Eni SpA, Claudio Descalzi (Eni's current CEO), Paolo Scaroni (Eni's former CEO), Roberto Casula (Eni's former head of exploration), and Malcolm Brinded (Shell's former chief of global exploration and production) of bribery charges in connection with a \$1.3 billion payment made for oil-drilling rights in Nigeria.¹³⁵ Separately, a Milan court accepted Eni's request to pay \$14 million to settle an investigation into allegations that it secured the renewal of oil licenses in the Republic of Congo in 2015 in exchange for stakes in the licenses to a Congolese company whose shareholders included Congo public officials.¹³⁶

In **Luxembourg**, the European Commission's European Public Prosecutor's Office ("EPPO"), the first independent office to investigate and prosecute crimes affecting the European Union's financial interest, including corruption, began operations.¹³⁷ In its first publicly disclosed investigation, the EPPO announced a corruption investigation against two companies and four Croatian

¹²⁹ See Anjali C. Das, *China's New Personal Information Protection Law*, NAT'L LAW R. (Dec. 2, 2021), <https://www.natlawreview.com/article/china-s-new-personal-information-protection-law>.

¹³⁰ See Mari Yamaguchi, *Japan Ex-Official Gets Prison Term in Casino Bribery Case*, ASSOC. PRESS (Sept. 7, 2021), <https://apnews.com/article/business-japan-9fb4b85edbfbb1b55ceb076340acc314>.

¹³¹ See *Implementing the OECD Anti-Bribery Convention – Phase 4 Two-Year Report: Japan* at 73, ORG. FOR ECON. CO-OPERATION & DEV. [OECD] (Oct. 13, 2021), <https://www.oecd.org/corruption/Japan-phase-4-follow-up-report-en.pdf>.

¹³² *Id.* at 9.

¹³³ See *id.* at 25-26; see also Press Release, *Statement of OECD on Japan's Efforts to Increase Foreign Bribery Enforcement*, OECD (June 12, 2014), <https://www.oecd.org/japan/statement-of-oecd-on-japan-efforts-to-increase-foreign-bribery-enforcement.htm>.

¹³⁴ See Noemie Bisserbe, *Former French President Sarkozy Convicted in Corruption Trial*, WALL ST. J. (March 1, 2021), <https://www.wsj.com/articles/former-french-president-sarkozy-convicted-in-corruption-trial-11614605343>.

¹³⁵ See Sarah McFarlane & Eric Sylvers, *Shell, Eni Acquitted of Corruption Charges in Nigeria Oil Case*, WALL ST. J. (March 17, 2021), <https://www.wsj.com/articles/shell-eni-found-not-guilty-of-corruption-in-nigeria-oil-case-11615997909>.

¹³⁶ See *Italian Judge Accepts Eni Request to Settle Congo Republic Oil Probe*, REUTERS (March 25, 2021), <https://www.reuters.com/article/eni-congorepublic-judge/italian-judge-accepts-eni-request-to-settle-congo-republic-oil-probe-idUSL8N2LN2XL>.

¹³⁷ See Press Release, *Protecting the EU budget: European Public Prosecutor's Office Will Start Operating on 1 June*, European Commission (May 26, 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2591.

citizens, including the former minister of Croatia's Ministry of Regional Development and EU Funds and the director of Croatia's Central Finance and Contracting Agency, in connection with a software development project worth approximately \$2.3 million that the ministry awarded in 2018.¹³⁸

Ali Sharif al-Emadi, **Qatar's** minister of finance, was arrested and removed as a board representative of the Qatar Investment Authority, the state's sovereign wealth fund, in connection with a bribery investigation into commissions relating to government contracts.¹³⁹

Scotland's Crown Office and Procurator Fiscal Service reached a civil settlement with John Wood Group PLC, a Scotland-based engineering and consulting company, to pay \$9 million in connection with allegations that Production Services Network Limited, a legacy joint venture of John Wood Group, paid the same amount in bribes to Unaoil, a Monaco-based oil services firm, in exchange for oil contracts entered into in Kazakhstan in 2008 and 2010.¹⁴⁰

In **Switzerland**, the Public Prosecutor's Office ordered three subsidiaries of SBM Offshore NV, the Dutch oil and gas services company, to pay a criminal penalty of \$7.6 million in connection with the companies' failure to implement measures to prevent bribe payments to foreign public officials between 2005 and 2012.¹⁴¹

A Swiss court convicted Beny Steinmetz, a French-Israeli businessman, on charges of corrupting foreign public officials in connection with allegations that he paid \$8.5 million in bribes to Mamadie Touré, a wife of Lansana Conté, Guinea's late president, to obtain the exploration rights to vast iron ore deposits in the Simandou region of Guinea. Steinmetz was sentenced to five years in prison and fined \$56.5 million.¹⁴²

In the **United Kingdom**, GPT Special Project Management Limited ("GPT"), a subsidiary of Airbus SE, pleaded guilty to one count of corruption and was ordered to pay \$38.9 million in connection with contracts awarded to GPT between December 2008 and July 2010 to provide telecommunications capabilities to the National Guard in Saudi Arabia.¹⁴³

David Lufkin, a former global head of sales of Petrofac Limited, a British oilfield services provider, pleaded guilty to three charges of bribery related to corrupt payments made to public officials to obtain contracts worth \$3.3 billion. Lufkin pleaded guilty for his role in paying agents approximately \$30 million to influence the awarding of engineering, procurement and construction

¹³⁸ See Press Release, *Former Minister and 3 Others Arrested for Suspected Fraud at Croatian Ministry of Regional Development and EU Funds*, European Pub. Prosecutor's Office (Nov. 11, 2021), <https://www.eppo.europa.eu/en/news/former-minister-and-3-others-arrested-suspected-fraud-croatian-ministry-regional-development>; Agence France-Presse, *Croatia Arrests Ex-Minister Over Alleged EU Funds Fraud*, BARRON'S (Nov. 10, 2021), <https://www.barrons.com/news/croatia-arrests-ex-minister-over-alleged-eu-funds-fraud-01636554907>.

¹³⁹ See Simeon Kerr, *Qatar Finance Minister Arrested in Rare Crackdown*, FIN. TIMES (May 6, 2021), <https://www.ft.com/content/ef609ff6-5bc8-4c91-b847-574d00d89316>; *Qatar National Bank Removes Ex Finance Minister From Board After Arrest*, REUTERS (May 25, 2021), <https://www.reuters.com/world/middle-east/qatar-national-bank-removes-ex-finance-minister-board-after-arrest-2021-05-25/>.

¹⁴⁰ See Dylan Tokar, *John Wood to Pay \$9 Million to Settle With Scottish Prosecutors*, WALL ST. J. (March 17, 2021), <https://www.wsj.com/articles/john-wood-to-pay-9-million-to-settle-with-scottish-prosecutors-11616004425>.
<https://www.reuters.com/article/eni-congorepublic-judge/italian-judge-accepts-eni-request-to-settle-congo-republic-oil-probe-idUSL8N2LN2XL>

¹⁴¹ See Press Release, *Conclusion of Legacy Issue in Switzerland*, SBM Offshore (Nov. 23, 2021), <https://www.sbmoffshore.com/newsroom/press-releases/2021/23-11-2021/conclusion-legacy-issue-switzerland>. <https://www.reuters.com/article/eni-congorepublic-judge/italian-judge-accepts-eni-request-to-settle-congo-republic-oil-probe-idUSL8N2LN2XL>

¹⁴² See Neil Hume, *Beny Steinmetz Found Guilty of Bribery*, FIN. TIMES (Jan. 22, 2021), <https://www.ft.com/content/c6ee5b24-6954-47b8-b9e3-3cb622a3d746>. <https://www.reuters.com/article/eni-congorepublic-judge/italian-judge-accepts-eni-request-to-settle-congo-republic-oil-probe-idUSL8N2LN2XL>

¹⁴³ See Press Release, *GPT Pleads Guilty to Corruption*, U.K. SERIOUS FRAUD OFFICE (Apr. 28, 2021), <https://www.sfo.gov.uk/2021/04/28/gpt-pleads-guilty-to-corruption/>; Dylan Tokar, *Airbus Subsidiary Pleads Guilty in Saudi Bribery Case*, WALL ST. J. (Apr. 28, 2021), <https://www.wsj.com/articles/airbus-subsidiary-pleads-guilty-in-saudi-bribery-case-11619631031>.

contracts in the United Arab Emirates to Petrofac.¹⁴⁴ Lufkin was sentenced to two years in prison, suspended for 18 months. Relatedly, Petrofac pleaded guilty to seven counts of failing to prevent bribery between 2011 and 2017 in connection with contracts in Iraq, Saudi Arabia and the United Arab Emirates.¹⁴⁵ Petrofac was ordered to pay a fine of \$104.3 million in connection with its guilty plea.

Latin America

In **Brazil**, the Federal Prosecutors' Office ("MPF") dissolved the task force overseeing the sweeping anti-corruption investigation known as Operation Car Wash (or "Lava Jato"), which resulted in 278 convictions and \$803 million in ill-gotten gains being returned to Brazil since 2014.¹⁴⁶ Brazil's Supreme Court annulled on procedural grounds the criminal corruption convictions against Luiz Inacio Lula da Silva, the former president of Brazil.¹⁴⁷ The charges against Lula grew out of Operation Car Wash and, in 2018, Lula was incarcerated for taking bribes from companies seeking contracts at Petrobras, Brazil's state-owned oil company.

Samsung Heavy Industries Co., Limited, a South Korean shipbuilding company, agreed to pay \$148.6 million as part of a leniency agreement with Brazilian federal authorities to settle a corruption investigation into alleged crimes over contracts that the company executed with Petrobras.¹⁴⁸ Separately, Rolls-Royce PLC, the British aerospace and defense company, entered into a \$27.8 million leniency agreement with Brazil's Comptroller General of the Union and the Attorney General of the Union to settle charges that the company bribed public officials in connection with contracts it executed with Petrobras between 2003 and 2005.¹⁴⁹

Brazil's MPF filed a criminal complaint against two senior executives at Doris Engenharia, a subsidiary of Doris Group, the French oil and gas conglomerate, in connection with a bribery scheme carried out between 2010 and 2015 at Petrobras.¹⁵⁰ According to MPF, the executives used an intermediary to pay bribes to the executive manager of engineering at Petrobras in exchange for obtaining contracts for the provision of engineering services for eight platform vessels worth more than \$200 million.

Alejandro Toledo, the former president of **Peru**, was cleared for extradition from the United States to Peru to face corruption charges.¹⁵¹ Toledo is accused of receiving \$20 million in bribe payments from Odebrecht S.A., the Brazilian conglomerate construction company, while in office between 2001 and 2006, in exchange for awarding public works contracts.

North America

In **Mexico**, Ricardo Anaya, a politician and former presidential candidate, faces charges of bribery, racketeering, and money laundering. According to the Attorney General's Office, in 2014, Anaya accepted a bribe worth \$500,000 in cash from Odebrecht

¹⁴⁴ See Joe Hoppe, *Former Petrofac Executive Pleads Guilty to Three Counts of Bribery*, WALL ST. J. (Jan. 15, 2021), <https://www.wsj.com/articles/former-petrofac-executive-pleads-guilty-to-three-counts-of-bribery-11610737627>.

¹⁴⁵ See Dylan Tokar & Jaime Llinares Taboada, *Petrofac Puts Bribery Case to Rest With \$104 Million Fine*, WALL ST. J. (Oct. 4, 2021), <https://www.wsj.com/articles/petrofac-puts-bribery-case-to-rest-with-77-million-fine-11633357811>.

¹⁴⁶ See Ricardo Brito & Gram Slattery, *After Seven Years, Brazil Shuts Down Car Wash Anti-Corruption Squad*, REUTERS (Feb. 3, 2021), <https://www.reuters.com/article/us-brazil-corruption/after-seven-years-brazil-shuts-down-car-wash-anti-corruption-squad-idUSKBN2A4068>.

¹⁴⁷ See *Brazil's Supreme Court Upholds Decision Annuling Lula Conviction*, FRANCE24 (Apr. 16, 2021), <https://www.france24.com/en/americas/20210415-brazil-s-supreme-court-upholds-decision-annulling-lula-conviction>.

¹⁴⁸ See *South Korea's Samsung Heavy Settles Brazil Graft Probe for \$149 Mln*, REUTERS (Feb. 23, 2021), <https://www.reuters.com/article/samsung-heavy-brazil-corruption/update-1-south-koreas-samsung-heavy-settles-brazil-graft-probe-for-149-mln-idUSL1N2KTOE1>.

¹⁴⁹ See Press Release, *CGU e AGU assinam acordo de leniência com a Rolls-Royce PLC*, BRAZIL'S COMPTROLLER GENERAL OF THE UNION (Oct. 26, 2021), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2021/10/cgu-e-agu-assinam-acordo-de-leniencia-com-a-rolls-royce-plc>.

¹⁵⁰ See Press Release, *MPF denuncia esquema fraudulento em contratos de oito navios plataforma de mais de US\$ 200 milhões*, BRAZIL'S FEDERAL PROSECUTION SERVICE (Aug. 26, 2021), <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/mpf-denuncia-esquema-fraudulento-em-contratos-de-oito-navios-plataforma-de-mais-de-us-200-milhoes>.

¹⁵¹ See *Peru's Ex-President Alejandro Toledo Cleared for Extradition from US*, BBC (Sept. 29, 2021), <https://www.bbc.com/news/world-latin-america-58710201>.

S.A. to help pass a constitutional amendment that opened Mexico's oil industry to private firms.¹⁵² The case against Anaya is based on the testimony of Emilio Lozoya, the former head of Petróleos Mexicanos (Pemex), Mexico's state-owned oil firm, who is currently under arrest on related corruption charges.

Oceania

In **Australia**, Russell Waugh, a former senior executive of CIMIC Group Limited, an Australian construction company formerly known as Leighton Holdings, was charged with conspiring to pay up to \$4 million in bribes to high-ranking port authority officials in Tanzania in order to obtain an \$84 million infrastructure contract between 2009 and 2010.¹⁵³ In a related investigation, David Savage, the former chief operating officer of Leighton Holdings, was arrested for concealing and altering company documents that threatened to reveal that Leighton Holdings paid \$77.6 million to Unaoil and other third parties between 2010 and 2011 in order to bribe government officials in Iraq in exchange for oil pipeline construction contracts worth approximately \$1.46 billion.¹⁵⁴

Pandora Papers

On October 3, 2021, the International Consortium of Investigative Journalists ("ICIJ") announced the release of approximately 11.9 million documents related to offshore companies, dubbed the "Pandora Papers." The released follow similar leaks in 2016 and 2017, referred to as the "Panama Papers" and "Paradise Papers," respectively. The documents reveal the use of offshore entities by over 300 public officials from over 90 countries, including 35 current and former heads of state.¹⁵⁵ Among the millions of documents, journalists claim to have identified evidence of bribe payments and other corrupt transaction paid to public officials, including transactions involving Odebrecht.¹⁵⁶ Although U.S. authorities have not announced new cases linked to the Pandora Papers, the release may lead to and assist new investigations by the DOJ.

Multilateral and Intergovernmental Institutions

OECD's Working Group on Bribery

On November 26, 2021, the Organisation for Economic Co-operation and Development ("OECD")'s Working Group on Bribery adopted and published a "Recommendation for Further Combating Bribery of Foreign Officials in International Business Transactions" (the "Recommendation"), updating its original 2009 Anti-Bribery Recommendation to capture important developments and trends in global anti-corruption enforcement over the past decade.¹⁵⁷ With this Recommendation, the 44 countries party to the OECD's Anti-Bribery Convention, including the United States, commit to implementing new measures to reinforce their efforts to prevent, detect and investigate foreign bribery.¹⁵⁸

¹⁵² See José de Córdoba & Juan Montes, *Tale of Gym Bag Stuffed With Cash Ensnares Top Opponent of Mexico's President*, WALL ST. J. (Nov. 7, 2021), <https://www.wsj.com/articles/mexico-bribery-case-ricardo-anaya-lopez-obrador-odebrecht-lozoya-11636307232>.

¹⁵³ See Nick McKenzie, *Australian Former Executive Charged with Bribery Offences Over African Plot*, SYDNEY MORNING HERALD (Feb. 23, 2021), <https://www.smh.com.au/business/companies/australian-former-executive-charged-with-bribery-offences-over-african-plot-20210222-p574ru.html>.

¹⁵⁴ See Fergus Hunter & Nick McKenzie, *Former Leighton Executive Charged in Sydney Over Global Unaoil Bribery Scandal*, SYDNEY MORNING HERALD (Jan. 11, 2021), <https://www.smh.com.au/national/nsw/former-leighton-executive-arrested-in-sydney-over-global-unaoil-bribery-scandal-20210111-p56t4p.html>.

¹⁵⁵ See The Guardian, *Pandora papers: biggest ever leak of offshore data exposes financial secrets of rich and powerful* (Oct. 3, 2021), <https://www.theguardian.com/news/2021/oct/03/pandora-papers-biggest-ever-leak-of-offshore-data-exposes-financial-secrets-of-rich-and-powerful>.

¹⁵⁶ See, e.g., Brenda Medina, *Highlights from Pandora Papers reporting in Latin America*, Intern'l Consortium of Investigative Journalists (Dec. 21, 2021), <https://www.icij.org/investigations/pandora-papers/highlights-from-pandora-papers-reporting-in-latin-america/>; Angel Pérez, *Josef Maiman usó sus offshores para captar coimas de Odebrecht*, La República (Oct. 21, 2021), <https://larepublica.pe/politica/2021/10/21/josef-maiman-uso-sus-offshores-para-captar-coimas-de-odebrecht-pandora-papers/>.

¹⁵⁷ See Org. for Econ. Co-operation and Devel. [OECD], *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD/LEGAL/0378 (Nov. 26, 2021), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>.

¹⁵⁸ See Press Release, *2021 OECD Anti-Bribery Recommendation*, OECD (Nov. 26, 2021), <https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm>.

New sections have been added on key topics that have emerged or significantly evolved in the anti-corruption arena since 2009. Among these is a new section on the “Demand Side” of bribery, which recommends that member countries “raise awareness of bribe solicitation risks” and publish rules and regulations that govern the solicitation of improper payments, gifts or expenses by public officials.¹⁵⁹ This recommendation echoes the Biden administration’s announcement that it will work with Congress and foreign governments to criminalize the demand side of bribery.¹⁶⁰

The OECD has also added a new section on “International Cooperation,” which recommends that member countries facilitate the use of mutual international legal assistance processes through adequate staffing and the use of digital technology for greater efficiency in processing requests. The Recommendation also encourages member countries to set up joint investigation teams to improve efforts to coordinate concurrent or parallel investigations and prosecutions, as well as promoting the exchange of personnel and experts between foreign jurisdictions, such as the secondment between 2017 and 2020 of DOJ FCPA prosecutor Albert Stieglitz to the UK’s Serious Fraud Office.

A new section on “Incentives for Compliance,” in conjunction with the OECD’s updates to the Recommendation’s “Good Practice Guidance on Internal Controls, Ethics and Compliance,” provides important advice and a framework for companies for creating or modifying their anti-corruption compliance programs. Other notable additions include a new section on “Data Protection,” which encourages member countries to issue regulations that would “allow for the processing of data in conducting anti-corruption due diligence and internal investigation processes,” and to ensure that compliance with data protection laws “does not unduly impede effective international co-operation in investigations and prosecutions of foreign bribery.” A “Non-Trial Resolutions” section further recommends that member countries adopt a framework for resolutions, such as the United States’ deferred prosecution agreements, that includes “the requirement for the alleged offender to admit facts and/or guilt, where applicable.”¹⁶¹

The Recommendation sets out an internationally recognized best standard for countries and companies to carry out their obligations in the fight against bribery, and the OECD has announced that the Working Group on Bribery will begin to report on implementation of the Recommendation every five years.

Separately, the OECD announced that it is seeking a new chair for the Working Group on Bribery, with Drago Kos, the Working Group’s current chair, finishing his term at the end of 2022.¹⁶² The new chair will begin their duties in January 2023 on a four-year term, and will help lead the Working Group in reporting on implementation of the Recommendation as well as its monitoring and evaluation of the laws implementing the OECD Anti-Bribery Convention.

Multilateral Development Bank Sanctions

In 2021, as in recent years, multilateral development banks (“MDBs”) continued to evolve their debarment practices, with a majority of MDBs sanctioning more individuals and entities than in prior years. The World Bank Group imposed 167 debarments, the Inter-American Development Bank imposed 45, the African Development Bank and the Asian Development Bank each imposed 13, and the European Bank for Reconstruction and Development imposed two.¹⁶³ Thirty of the debarments

¹⁵⁹ OECD, *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, XII.i, OECD/LEGAL/0378 (Nov. 26, 2021), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>.

¹⁶⁰ See Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Biden Administration Launches U.S. Strategy on Countering Corruption (Dec. 14, 2021), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/biden-administration-launches-us-strategy-on-countering-corruption?id=41927>.

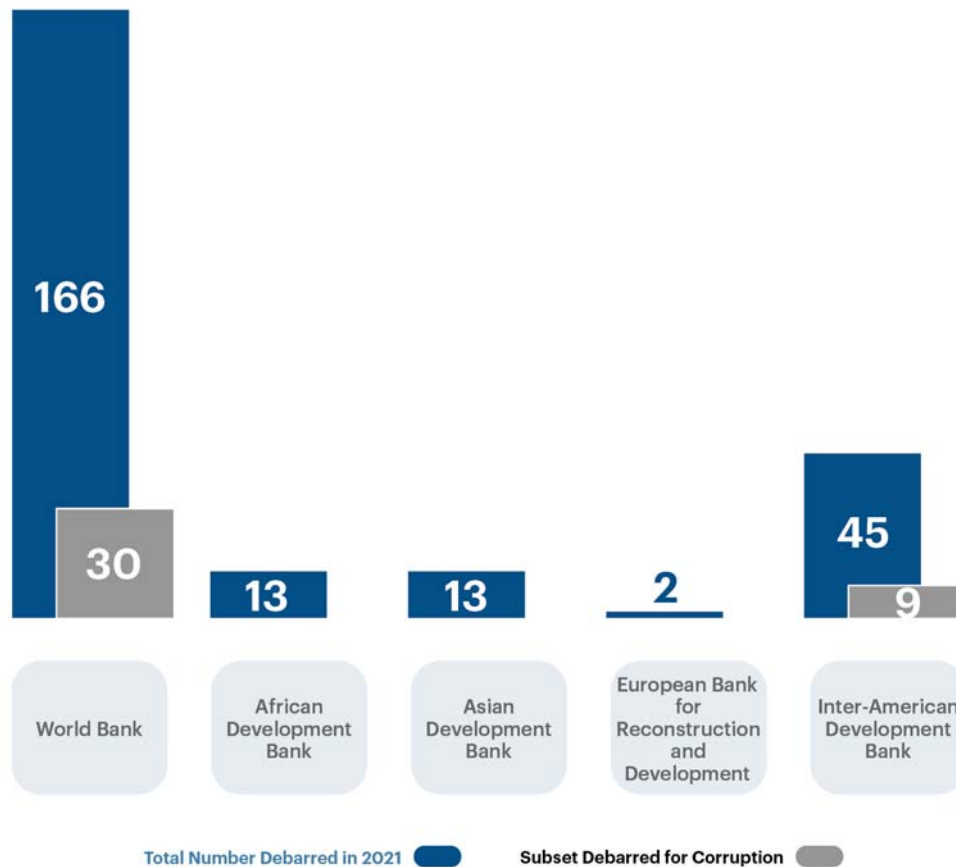
¹⁶¹ OECD, *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, XIII.i, OECD/LEGAL/0378 (Nov. 26, 2021), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>.

¹⁶² See Press Release, *Vacancy announcement: Chair of the OECD Working Group on Bribery*, OECD (Oct. 1, 2021), <https://www.oecd.org/corruption/anti-bribery/vacancy-announcement-chair-of-the-oecd-working-group-on-bribery.htm>.

¹⁶³ See Debarments were counted based on the data reported by each MDB, using each bank’s own reporting criteria for the calendar year 2021. See *Debarment and Sanctions Procedures*, AFRICAN DEV. BANK GRP., <https://www.afdb.org/en/projects-and-operations/procurement/debarment-and-sanctions-procedures/>; *Published List*, ASIAN DEV. BANK, <http://lnadbg4.adb.org/oga0009p.nsf/sancALLPublic?OpenView&count=999>; *Ineligible Entities*, EUROPEAN BANK FOR RECONSTRUCTR. AND DEV., <http://www.ebrd.com/ineligible->

imposed by the World Bank and nine of the debarments imposed by the Inter-American Development Bank were based, at least in part, on corrupt practices. The African Development Bank, the Asian Development Bank and the European Bank for Reconstruction and Development do not appear to have imposed any debarments based on corrupt practices. The extent to which MDBs imposed debarments based on corrupt practices represents a marked increase from recent years, during which many of the MDBs did not impose any such debarments.

Unfortunately, as in prior years, limited conclusions about MDB corruption enforcement can be drawn from this data. Debarments of affiliates of the same company generally are reported as separate debarments, such that debarment statistics do not reflect the number of distinct investigations that have resulted in debarments.



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[entities.html](#) (including debarments based upon third-party findings); *Sanctioned Firms and Individuals*, INTER-AMERICAN DEV. BANK, <http://www.iadb.org/en/topics/transparency/integrity-at-the-idb-group/sanctioned-firms-and-individuals,1293.html>; *World Bank Listing of Ineligible Firms & Individuals*, WORLD BANK, <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>. This chart includes debarments listed by these MDBs as having begun in 2021, and are designated as being related to corruption either where (i) the MDB specifies the basis for the debarment and it is related to corruption, or (ii) a press release indicates that the debarment is related to corruption. Cross-debarments (i.e., debarments that are on the basis of that entities having been debarred by another MDB) are counted only once, under the MDB that originated the debarment.

An FCPA Enforcement “Surge” and Looking Forward into 2022

In its first year, the Biden administration has placed countering corruption, including through anti-corruption enforcement, at the forefront of its policymaking, unveiling an unprecedented government-wide approach to fighting corruption domestically and abroad, and uniting resources from traditional anti-corruption enforcers—mainly, the DOJ and SEC—with departments and agencies less known for their role in addressing corruption, such as the Department of Defense, the National Security Agency and the Office of Management and Budget. The DOJ and SEC have further emphasized that there will be a surge in resources for anti-corruption investigations, heightened scrutiny on corporate misconduct, and increasingly severe penalties for repeat offenders.

However, even allowing for the normal vicissitudes in enforcement, in 2021 the DOJ and SEC each resolved the lowest number of corporate and individual enforcements since the early 2000s when FCPA enforcement took off. Similarly, penalty totals related to FCPA enforcement dropped to levels far below figures seen in recent years, with the two exceptions of penalty totals in 2012 and 2015.

It remains to be seen to what extent the departments and agencies of the Executive Branch, working alongside foreign enforcement counterparts, will succeed in implementing the Biden administration’s anti-corruption objectives. Even though enforcement activity ebbed in 2021, U.S. authorities are making clear in their pronouncements that they intend to reverse this trend. Corporate entities should prepare for the likelihood of a surge in enforcement activity, new regulations to assist the government in countering corruption and associated money laundering activity, and new tools being developed and deployed by the DOJ, SEC, and non-traditional agencies in identifying, investigating, and enforcing the FCPA.

We look forward to providing you with further updates on these and other developments in 2022.

* * *

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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