

 **LATIN LAWYER**

THE GUIDE TO CORPORATE COMPLIANCE

THIRD EDITION

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The Guide to Corporate Compliance

Third Edition

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Publisher's Note

Latin Lawyer and LACCA are delighted to publish the third edition of *The Guide to Corporate Compliance*.

Edited by Andrew M Levine, a litigation partner at Debevoise & Plimpton LLP, with the assistance of associate editors Reynaldo Manzanarez Radilla, a corporate attorney and compliance professional, Valeria Plastino, vice president, general counsel and regional compliance officer at Lumen Technologies, and Fabio Selhorst, senior vice president of corporate affairs at Hapvida, this new guide brings together the knowledge and experience of leading practitioners from a variety of disciplines and provides guidance that will benefit all practitioners.

We are delighted to have worked with so many leading individuals to produce *The Guide to Corporate Compliance*. If you find it useful, you may also like the other books in the Latin Lawyer series, including *The Guide to Mergers and Acquisitions* and *The Guide to Restructuring*, as well as our jurisdictional references and our new tool providing overviews of regulators in Latin America.

My thanks to the editors for their vision and energy in pursuing this project and to my colleagues in production for achieving such a polished work.

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Part I

Setting the Scene

CHAPTER 2

Latin America's Compliance Climate Today

Julie Bédard and Mayra Suárez¹

Introduction

Since 2014, Brazil's *Operation Car Wash* investigation into widespread bribery and corruption involving politicians and state-owned enterprises has dominated headlines and captured public attention across Latin America and around the world. The investigation led to the conviction (although subsequently annulled) of one former Brazilian president² and the impeachment of another,³ the guilty

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- 1 Julie Bédard is a partner and Mayra Suárez is a counsel at Skadden, Arps, Slate, Meagher & Flom LLP. The authors would like to thank and Lauren Eisenberg, a former associate, for her contributions to this chapter, as well as Thiago Jabor Pinheiro, Thiago Luís Santos Sombra and Luiza Mussoi Cattley, of Mattos, Filho, Veiga Filho, Advogados; César Coronel Jones, Octavio Rosselli Becerra and Maria Celeste Alvarado Herrera of Coronel & Perez; José Daniel Amado Vargas and José Luis Repetto of Miranda & Amado; Carlos Chávez of Galicia Abogados, S.C.; Fulvio L Italiani, Ricardo Larrazabal and José Humberto Frías of D'Empaire Reyna Abogados; Daniel Posse, Oscar Tutasaura, Jaime Cubillos and Luis Miguel Russi of Posse, Herrera & Ruiz; Mario Antonio Sáenz Marinero of Novis Estudio Legal; Jorge Luis Arenales de la Roca and Anneliss Wohlers of Arias & Muñoz; Ignacio Sanz of Zang Bergel & Viñes Abogados; Juan Carlos Tristán and Eduardo Calderon of BLP Abogados; Andrés Moreno and Fernando Landa of Moreno Baldivieso; Felipe G Ossa and Santiago Bravo Sanz of Claro y Cía; and Cedric Kinschots and Estif Aparicio of Arias, Fabrega & Fabrega for their contributions to this chapter.
 - 2 Associated Press, 'Former Brazilian President Lula convicted in second corruption case', *Los Angeles Times* (6 February 2019), <https://www.latimes.com/world/la-fg-brazil-lula-conviction-20190206-story.html>. 'What did Lava Jato, Brazil's anti-corruption investigation, achieve?' *The Economist* (9 March 2021), <https://www.economist.com/the-economist-explains/2021/03/09/what-did-lava-jato-brazils-anti-corruption-investigation-achieve>.
 - 3 Romero, Simon, 'Dilma Rousseff Is Ousted as Brazil's President in Impeachment Vote', *The New York Times* (31 August 2016), <https://www.nytimes.com/2016/09/01/world/americas/brazil-dilma-rousseff-impeached-removed-president.html>.

pleas of a number of Brazilian and foreign companies, payments of millions of dollars in penalties and more than 250 convictions.⁴

In the wake of that unprecedented enforcement activity, legislators, enforcement agencies and judiciaries within and outside Latin America have made substantial efforts to combat corruption in their respective regions. The US Department of Justice (US DOJ) and US Securities and Exchange Commission (US SEC) have brought corruption-related charges against more than 100 individuals and corporations in respect of conduct in or related to Latin America since 2015, often in collaboration with enforcement counterparts in other countries.⁵

The international interest in combating corruption in the region shows no sign of abating. In March 2019, the US Federal Bureau of Investigation (FBI) announced the Miami International Corruption Squad (a task force intended to work alongside the FBI's other international corruption squads, the US SEC and the US DOJ's Fraud and Money Laundering Asset Forfeiture sections), signalling the continuing focus of US authorities on corruption in Latin America. The squad was 'created to combat international corruption by addressing foreign bribery, kleptocracy, and international antitrust matters . . . occurring outside U.S. borders but having a nexus to the U.S.'⁶ The squad has worked on several cases since its creation, including some that settled in 2020 and at least one that led to a conviction in 2021, and has developed strong partnerships with law enforcement officials in Brazil, Colombia and Ecuador.⁷ In October 2021, Deputy Attorney General Lisa Monaco announced a commitment

4 Brazil's Federal Public Prosecutor's Office, 'Caso Lava Jato – Resultados' (24 August 2021), <http://www.mpf.mp.br/grandes-casos/lava-jato/resultados>. See also Brito, Ricardo & Slattery, Gram, 'After seven years, Brazil shuts down Car Wash anti-corruption squad', *Reuters* (3 February 2021), <https://www.reuters.com/article/us-brazil-corruption/after-seven-years-brazil-shuts-down-car-wash-anti-corruption-squad-idUSKBN2A4068>.

5 See section below titled 'Recent enforcement trends'.

6 Press release, Federal Bureau of Investigation [FBI], 'FBI Announces New International Corruption Squad in Miami Field Office' (5 March 2019), <https://www.fbi.gov/news/pressrel/press-releases/fbi-announces-new-international-corruption-squad-in-miami-field-office>.

7 See Sun, Mengqi, 'FBI Increasingly Probes for Corruption Overseas', *The Wall Street Journal* (31 December 2020), <https://www.wsj.com/articles/fbi-increasingly-probes-for-corruption-overseas-11609434000>. Press Release, US DOJ, 'Former Ecuadorian Government Official Sentenced to Prison for Role in Bribery and Money Laundering Scheme' (23 March 2021), <https://www.justice.gov/opa/pr/former-ecuadorian-government-official-sentenced-prison-role-bribery-and-money-laundering>.

to increasing resources to DOJ prosecutors, including the establishment of a permanent squad of FBI agents within the Criminal Fraud Section, signalling a continued interest in prosecuting corporate and white-collar crime.⁸

On 3 June 2021, US President Joe Biden issued a Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest.⁹ Shortly thereafter, the US DOJ announced an Anticorruption Task Force aimed at combatting corruption in Central America, specifically in the Northern Triangle, or El Salvador, Guatemala and Honduras.¹⁰

Companies operating in Latin America should be mindful of recent legislative, judicial and enforcement trends, and of global regulators' focus on fighting corruption in the region. This chapter reviews:

- recent trends in legislative and constitutional anti-corruption enforcement regimes in Latin America;
- changes in data protection regimes within and outside Latin America that may affect corporate investigations in the region; and
- global enforcement of corruption-related conduct in Latin America, including the impact of covid-19-related investigations and cooperation among US, Latin American and other regulators.

8 Press Release, US DOJ, 'Deputy Attorney General Lisa O. Monaco Gives Keynote Address at ABA's 36th National Institute on White Collar Crime' (28 October 2021), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute>.

9 Press Release, White House, 'Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest' (3 June 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>.

10 See Press Release, US DOJ, 'Attorney General Announces Initiatives to Combat Human Smuggling and Trafficking and to Fight Corruption in Central America' (7 June 2021), <https://www.justice.gov/opa/pr/attorney-general-announces-initiatives-combat-human-smuggling-and-trafficking-and-fight>. see also Press Release, US DOJ, 'Justice Department Anticorruption Task Force Launches New Measures to Combat Corruption in Central America' (15 October 2021) [hereinafter New Measures to Combat Corruption in Central America], <https://www.justice.gov/opa/pr/justice-department-anticorruption-task-force-launches-new-measures-combat-corruption-central>.

Key legislative changes in Latin America and elsewhere

Development and strengthening of anti-corruption regimes

Corporate criminal liability

In recent years, many Latin American countries, by legislation or constitutional amendment, have established corporate criminal liability for bribery and corruption offences, with respect to conduct by agents of or for the benefit of corporations or similar legal entities. For example, Argentina (March 2018),¹¹ Mexico (May 2015 and June 2016),¹² Peru (April 2016, amended 2017 and

11 See Law No. 27401 of 1 December 2017 [CXXV-33.763] B.O. 3 (Arg.), <https://www.ilo.org/dyn/natlex/docs/electronic/106245/130242/f-2006629615/ley%2027401%20argentina.pdf>. The law provides for criminal liability for offences, including foreign bribery and false books and records, committed with the company's intervention or in the company's name, interest or benefit. Penalties include fines, suspension of commercial activities, disqualification from public tenders, cancellation of corporate registration, loss of government benefits and publication of the conviction. There is no retroactive liability.

12 Since 2005, the Mexican Federal Criminal Code provides for corporate criminal liability in cases of international bribery, committed in the entity's name, on its behalf, for its benefit or using means provided by the entity. See Código Penal Federal [CPF], Art. 222 *bis*, Diario Oficial de la Federación [DOF] 14-08-1931, últimas reformas DOF 12-11-2021 (Mex.), https://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Penal_Federal.pdf. In 2015, the Mexican Constitution was amended to mandate Congress to pass comprehensive anti-corruption legislation providing for criminal liability for corruption offences. See Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de combate a la corrupción, Diario Oficial de la Federación [DOF] 27-05-2015 (Mex.), www.diputados.gob.mx/LeyesBiblio/proceso/docleg/62/223_DOF_27may15.pdf. Further, in 2016, the Federal Criminal Code and the National Criminal Procedure Code were amended to extend corporate criminal liability to certain offences, including public bribery and influence peddling, provided that the entity did not have proper controls in place; see Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Código Nacional de Procedimientos Penales; del Código Penal Federal; de la Ley General del Sistema Nacional de Seguridad Pública; de la Ley Federal para la Protección a Personas que Intervienen en el Procedimiento Penal; de la Ley General para Prevenir y Sancionar los Delitos en Materia de Secuestro, Reglamentaria de la fracción XXI del Artículo 73 de la Constitución Política de los Estados Unidos Mexicanos, de la Ley de Amparo, Reglamentaria de los artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de Defensoría Pública, del Código Fiscal de la Federación y de la Ley de Instituciones de Crédito, Diario Oficial de la Federación [DOF] 17-06-2016 (Mex.), https://www.dof.gob.mx/nota_detalle.php?codigo=5441763&fecha=17/06/2016. see also Decreto por el que se expide la Ley General del Sistema Nacional Anticorrupción; la Ley General de Responsabilidades Administrativas, y la Ley Orgánica del Tribunal Federal de Justicia Administrativa, Diario Oficial de la Federación [DOF] 18-07-2016 (Mex.), https://www.diputados.gob.mx/LeyesBiblio/ref/lgsna/LGSNA_orig_18jul16.pdf.

2018),¹³ Ecuador (2021),¹⁴ and Costa Rica (2019)¹⁵ now provide for corporate criminal liability for bribery of domestic public officials; in some countries, corporations can be liable for related conduct such as money laundering, commercial bribery and bribery of foreign officials.

Additionally, in some Latin American countries – such as Brazil and Colombia – only individuals, not corporations, can be held criminally liable for anti-corruption violations, though companies in Colombia may be held jointly and severally liable with employees and executives who engage in corrupt conduct.¹⁶ In Brazil, corporations can only be held criminally liable for envi-

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- 13 See Law No. 30424, El Peruano (Peru), 21 April 2016, www.leyes.congreso.gob.pe/Documentos/Leyes/30424.pdf (providing for criminal liability for transnational bribery committed in the name or on behalf of the legal entity for its direct or indirect benefit); Administrative Decree No. 1352 (amending Law No. 30424), El Peruano (Peru), 1 January 2017, <https://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/01352.pdf> (delaying enactment of Law No. 30424 to 1 January 2018 and expanding criminal liability to cover the offences of bribery of domestic public officials, money laundering and financing of terrorism); Law No. 30835 (amending Law No. 30424), El Peruano (Peru), 2 August 2018, https://www.leyes.congreso.gob.pe/Documentos/2016_2021/ADLP/Normas_Legales/30835-LEY.pdf (modifying the name of Law No. 30424 and expanding criminal liability to cover the offences of influence peddling and collusion).
- 14 See Organic Integral Criminal Code, Official Registry (Ecuador), 10 February 2014, https://oig.cepal.org/sites/default/files/2014_codigopenal_ecu.pdf. see also Organic Law No. 392, 'On Amendments to the Comprehensive Organic Criminal Code in Relation to Anti-Corruption', Official Registry (Ecuador), 12 February 2021, <https://lvro.finder.lexis.com.ec/?id=071BBC576F73088AA25B474286480662679664BB&type=%27%27&productName=LEXISNEWS&page=1>.
- 15 See Ley 9699 de Responsabilidad de las Personas Jurídicas sobre Cohechos Domésticos, Soborno Transnacional y otros Delitos (Costa Rica), http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=88954.
- 16 See Law 599 of 24 July 2000, Official Gazette (Colombia), 22 (<https://www.refworld.org/docid/3dbd1fd94.html>) see Law No. 9605 of 12 February 1998, Official Gazette (Brazil) (13 February 1998), www.planalto.gov.br/ccivil_03/leis/l9605.htm. See also Law 2195 of 18 January 2022, Official Gazette (Colombia), <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202195%20DEL%2018%20DE%20ENERO%20DE%202022.pdf> (providing for administrative sanctions of up to 200 million pesos (US\$51 million) for corporate entities that benefit or seek to benefit from foreign bribery committed by administrators or employees).

ronmental violations.¹⁷ In practice, however, corporations will retain criminal counsel and closely monitor any proceedings against current and former executives and other employees, particularly given the other forms of liability that corporations face.

Mandated or recommended compliance programmes and other factors in leniency determinations

A number of countries have passed laws relating to corporate compliance programmes that are (1) required, (2) recommended or (3) if implemented, can entitle a company in violation of anti-corruption laws to leniency.^{18,19}

In Brazil, although compliance programmes are generally not required under federal law, unless contracting with the government under certain circumstances, companies with effective compliance programmes may be entitled to a fine reduction of up to 4 per cent in civil and administrative proceedings.²⁰ On 9 December 2020, Brazil released an anti-corruption plan that includes a timetable for development of criteria to assess compliance programmes and calculate cooperation

17 Law No. 9605 (footnote 16, above).

18 Federal and certain state laws in Brazil require companies that contract with state entities to have compliance programmes. See, e.g., Federal District Law No. 6112 of 2 February 2018, Official Gazette (Brazil) (6 February 2018); Rio de Janeiro State Law No. 7753 of 17 October 2017, Official Gazette (Brazil) (18 October 2017); Rio Grande do Sul State Law No. 15228 of 25 September 2018, Official Gazette (Brazil) (26 September 2018); Amazonas State Law No. 4370 of 27 December 2018, Amazon Official Gazette (Brazil) (27 December 2018); Goiás State Law No. 20489 of 10 June 2019, Goiás Official Gazette (Brazil) (25 June 2019).

19 See Chapter 13, 'The Advantages of a Robust Compliance Programme in the Event of an External Investigation'.

20 Law No. 12846 of 1 August 2013, Official Gazette (Brazil) (2 August 2013), https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/30042702/do1-2013-08-02-lei-n-12-846-de-1-de-agosto-de-2013-30042696. [LAC] (provides incentives, but not requirements for corporate compliance programmes); Decree No. 8420 of 18 March 2015, Official Gazette (Brazil) (19 March 2015), http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Decreto/D8420.htm (providing credit for effective compliance programmes, defining parameters for evaluating compliance programmes (e.g., customised to each legal entity and its activities, commitment by senior management, training) and providing for the administrative liability of legal persons for the commission of acts against public, national or foreign administrations); Instruction No. 607 of 17 June 2019, Official Gazette (Brazil) (18 June 2019), www.in.gov.br/web/dou/-/instrucao-n-607-de-17-de-junho-de-2019-164059674. Securities and Exchange Commission of Brazil, Rule No. 607 establishes that any publicly held company with an effective compliance programme may have their fines reduced by up to 25 per cent.

credit as part of leniency agreements.²¹ In April 2021, Brazil passed a new Public Procurement Law, Law No. 14133, that mandates companies that win public bids valued at over 200 million reais to develop an effective compliance programme within six months of the contract's execution.²² Under this new legal framework, companies that have compliance programmes in place prior to the tender process, all else being equal between two bids, will be awarded the contract.²³

In August 2021, Colombia expanded the criteria used to determine which companies must adopt 'transparency and business ethics programmes'. To be deemed sufficient, the programmes now must also include a compliance officer, in addition to other requirements.²⁴

Peru provides companies that have effective 'prevention models', prior to the commission of a crime, with complete immunity from corporate liability for corrupt conduct.²⁵ Similarly, under Chilean law, the adoption and implementation of 'prevention models' prior to the corrupt conduct may be sufficient evidence to prove the company's innocence in criminal proceedings.²⁶ In Costa Rica, compliance programmes are not required by law; however, for companies that adopt them, they can serve as a mitigating factor in any criminal penalties by up to 40 per cent.²⁷

21 See Interministerial Committee to Combat Corruption, 'Anticorruption Plan: Diagnosis and Actions of the Federal Government' (9 December 2020), <https://www.gov.br/cgu/pt-br/anticorruptcao/plano-anticorruptcao.pdf>. Interministerial Committee to Combat Corruption, 'Anticorruption Plan: Diagnosis and Actions of the Federal Government: Accompanying Newsletter' (9 December 2021), <https://www.gov.br/cgu/pt-br/anticorruptcao/PLANOANTICORRUPCAOBOLETIMDEZ2021.pdf>.

22 See Law No. 14133 of 1 April 2021, Official Gazette (Brazil) (1 April 2021), <https://www.in.gov.br/en/web/dou/-/lei-n-14.133-de-1-de-abril-de-2021-311876884> (which will replace previous Public Procurement Law No. 8666 of 21 June 1993 as of 1 April 2023).

23 *id.* Art. 60.

24 See External Circular 100-000011 of 9 August 2021, Official Gazette (Colombia), https://xperta.legis.co/visor/legcol/legcol_39161724d85b4b7f90ef9ed36194f334/coleccion-de-legislacion-colombiana/circular-externa-100-000011-de-agosto-9-de-2021.

25 See Law No. 30424, Art. 17 (footnote 13, above).

26 See Law No. 20393 (establishing the criminal responsibility of legal persons in the crimes of laundering of assets, financing of terrorism and bribery), 25 November 2009, Official Gazette (Chile), http://www.oas.org/juridico/spanish/mesicic3_chl_ley20393.pdf (stating that an effective prevention model includes: (1) systems to identify risks, establish specific protocols, rules and procedures to prevent the commission of said offences, and identify procedures for administrating and auditing the entity's financial resources; (2) internal administrative sanctions; (3) procedures for reporting wrongdoing; and (4) procedures to detect and correct systemic failures in the prevention model).

27 See Law No. 9699 (footnote 15, above).

In Argentina, compliance programmes are not a general regulatory requirement for companies, unless contracting with the Argentine federal government; even so, since said programmes are in all cases a requisite element for obtaining a reduction of or even an exemption from anti-bribery-related penalties, Law No. 27401 sets forth mandatory (i.e., minimal) and recommended components of a corporate compliance programme:²⁸

Mandatory	Recommended
Code of ethics or code of conduct	Periodic risk analyses and review of the compliance programme
Specific policies or procedures to prevent criminal offences in public tenders, administrative agreements or in any other dealings with public administration	Clear anti-corruption tone from the top
Periodic compliance training	Whistle-blower reporting channels
	Whistle-blower protection policy
	Internal investigation protocols to protect the rights of employees under investigation to impose effective sanctions for misconduct
	Third-party due diligence policies
	Due diligence policies relating to mergers and acquisitions
	Appointment of a compliance officer

Some countries provide incentives in the form of credit or leniency for disclosure of misconduct to government authorities and cooperation with investigations. For example, in Peru, the Public Prosecutor's Office can enter into leniency agreements – subject to judicial approval – with individuals and companies who are involved in the commission of certain crimes, including bribery of public officials, when the company or individual (1) voluntarily abandons the criminal activities, (2) admits freely, or does not contradict, the facts concerning the criminal conduct and (3) presents himself or herself to the Public Prosecutor's Office, demonstrating a willingness to provide useful information.²⁹

Similarly, under Ecuador's Criminal Code, individuals who engage in corrupt conduct can obtain a reduction in their sentence if they provide accurate and verifiable information that (1) clarifies facts under investigation, (2) results in the

28 See Law No. 27401, Arts. 9, 23-24 (footnote 11, above).

29 See Legislative Decree No. 957, Art. 472, Criminal Procedure Code (Peru), 29 July 2004, <https://spij.minjus.gob.pe/spij-ext-web/detallenorma/H682695>.

identification of culpable persons or (3) helps to prevent, neutralise or impede the commission of a crime of equal or greater significance.³⁰ For an individual to receive cooperation credit, the prosecutor must confirm in the charging document presented to the court that the cooperation was effective.³¹ Additionally, companies can mitigate criminal sanctions by (1) self-disclosing the criminal conduct before an investigation begins, (2) cooperating with the investigation, (3) compensating the damage caused by the crime before the initiation of court proceedings, and (4) having a compliance programme in place and appointed officers responsible for its implementation prior to the commission of the crime.³²

Expansion of prohibited and regulated conduct

At the same time that some countries in Latin America are offering leniency to those companies that cooperate or maintain an effective compliance programme, a number of Latin American countries have expanded the reach of their anti-bribery statutes. In Peru and Chile, for instance, the prohibited conduct extends beyond the bribery of public officials and includes commercial bribery, that is to say bribery of individuals acting in a private capacity.³³ However in Peru, private corruption is still not a crime that can be attributed to companies, only individuals. Others, such as Argentina and Venezuela, have also criminalised bribery of foreign, not just domestic, government officials.³⁴

Some countries also have placed restrictions on corporate political contributions as a means to combat corruption. For example, in Chile, companies are prohibited from political contributions to electoral campaigns; these may be made by individuals only.³⁵ In Colombia, any company that makes a contribution greater

30 See Organic Integral Criminal Code, Official Registry (Ecuador), 3 February 2014, https://oig.cepal.org/sites/default/files/2014_codigopenal_ecu.pdf.

31 *id.* Arts. 492, 493.

32 See Law No. 27401, Art. 1, (footnote 11, above); Organic Law No. 392, Art. 1 (footnote 14, above).

33 See Law No. 21121 (amending the Criminal Code and other legal rules for the prevention, detection and prosecution of corruption), 20 November 2018, Official Gazette (Chile), <https://www.bcn.cl/leychile/navegar?idNorma=1125600>. Legislative Decree No. 1385, Criminal Code (Peru), 4 September 2018, https://cdn.www.gob.pe/uploads/document/file/192144/DL_1385.pdf.

34 Official Gazette No. 6155 (Venezuela), 19 November 2014, https://www.legiscompliance.com.br/images/pdf/decreto_6155_lac_venezuela.pdf.

35 See Law No. 20900 (for the strengthening and transparency of democracy), Official Gazette (Chile), 14 April 2016, <https://www.diariooficial.interior.gob.cl/media/2016/04/14/do-20160414.pdf>.

than 2.5 per cent of the total contribution permitted under law to any president, governor or mayor may not enter into public contracts with entities administered by the candidate while the candidate is in office.³⁶

Recent reductions in anti-corruption efforts

Despite the strengthening of anti-corruption legislative schemes discussed above, certain countries have softened anti-corruption efforts and penalties in recent years. In January 2020, the Honduran National Congress declined to renew the Mission to Support the Fight Against Corruption and Impunity (MACCIH), which was created in 2016 and resulted in the prosecution of over 100 people.³⁷ And a new penal code implemented in Honduras in June 2020 reduced individual sentences for corruption-related crimes.³⁸ Similarly, in June 2021, El Salvador announced that it was pulling out of the International Commission against Impunity in El Salvador (CICIES), its anti-corruption accord with the Organization of American States (OAS).³⁹ El Salvador cited the OAS's hiring of an opposition politician, who was at the time under investigation in El Salvador for corruption, as the reason for leaving CICIES.⁴⁰

While the presidents of Mexico and Brazil promised anti-corruption reforms during their respective 2018 presidential campaigns, they have largely failed to enact them.⁴¹ Mexican President Andrés Manuel López Obrador's anti-corruption initiatives have been dismissed by critics as 'largely symbolic'.⁴² In October 2020, Brazilian President Jair Bolsonaro ended *Operation Car Wash*,

36 See Law 1474 of 12 July 2011, Official Gazette (Colombia), <http://wp.presidencia.gov.co/sitios/normativa/leyes/Documents/Juridica/Ley%201474%20de%2012%20de%20Julio%20de%202011.pdf>.

37 See 'Congreso Nacional se pronuncia por no extender acuerdo de la MACCIH,' Criterio (11 December 2019), <https://criterio.hn/congreso-nacional-se-pronuncia-por-no-extender-acuerdo-de-la-maccih>. 'Press Release E-003/20,' Organization of American States (17 January 2020), https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-003/20.

38 See, e.g., Gonzalez, Marlon, 'Honduras' new penal code lightens sentences for corruption,' AP News (25 June 2020), <https://apnews.com/article/1efbd7e8a44f6c2458fb6a15c2950642>.

39 See 'Press Release E-059/21,' Organization of American States (7 June 2021), https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-059/21.

40 id.

41 See Beittel, June S, 'Status of Latin America's Anti-corruption Fight amid Health and Political Challenges,' Congressional Research Service: Informing the legislative debate since 1914 (21 April 2020), <https://fas.org/sgp/crs/row/IN11350.pdf>.

42 id.

declaring “There isn’t any more corruption in the government.”⁴³ The following month, one of Bolsonaro’s sons (a senator) was charged with embezzlement and money laundering related to theft of public money. Another son, a Rio city council member, has been accused of similar conduct.⁴⁴ On October 2021, Bolsonaro approved Law 14230, loosening several provisions of Brazil’s Administrative Improbability Law, which imposes administrative and civil liability on public officials who violate public administration principles, by, for example, unlawfully enriching themselves through their positions as public officials.⁴⁵ The changes to the law include requiring wilful misconduct for an act to be unlawful and giving sole prosecution authority to the Public Prosecutor’s Office.⁴⁶

Covid-related relaxation of public procurement requirements and the rise in corruption

Transparency International has observed an ‘explosion in irregularities and corruption cases associated with covid-19 related procurement’ in Latin America since the start of the pandemic.⁴⁷ This is likely owing, at least in part, to the relaxation of public procurement requirements across the region to facilitate and expedite purchases necessary to combat covid-19.

For example, in February 2020, Brazil enacted legislation permitting the government to contract with companies previously disqualified from the public bidding process, and increased the limit on post-award changes to contracts from 25 per cent to 50 per cent.⁴⁸ The legislation also removed any prerequisite for

43 McCoy, Terrence ‘Bolsonaro ran against corruption. Now, he’ll have to find another slogan’, *The Washington Post* (21 November 2020), https://www.washingtonpost.com/world/the_americas/brazil-bolsonaro-corruption-sergio-moro/2020/11/20/dfd4e9f0-282e-11eb-92b7-6ef17b3fe3b4_story.html.

44 id.

45 See Law No. 14230 of 25 October 2021, Official Gazette (Brazil) (26 October 2021), <https://www.in.gov.br/en/web/dou/-/lei-n-14.230-de-25-de-outubro-de-2021-354623102>.

46 id.

47 Transparency International, CPI 2020: Americas (28 January 2021), <https://www.transparency.org/en/news/cpi-2020-americas>. see also Gressier, Roman, ‘Series of Corruption Allegations Stains El Salvador’s Promise – What Political Impact Will It Have?’, *El Faro* (11 September 2020), https://www.elfaro.net/en/202009/el_salvador/24796/Series-of-Corruption-Allegations-Stains-El-Salvador%E2%80%99s-Promise-%E2%80%94-What-Political-Impact-Will-It-Have.htm.

48 See Law No. 13.979, Art. 4 of 6 February 2020, Official Gazette (Brazil) (7 February 2020), https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13979.htm.

preliminary studies for common goods and services, and created an exception for services and engineering contracts valued at more than 150 million reals from public hearings for tenders.⁴⁹

In a similar effort to ensure adequate resources to combat the pandemic, in March 2020, El Salvador's Legislative Assembly eased regulations related to the public procurement process, including temporary nullification of the Procurement and Contracting Law, the prevailing legal framework regulating government purchases.⁵⁰

United States – Northern Triangle Enhanced Engagement Act⁵¹

Enacted in December 2020, the Act requires that the US Secretary of State and the Administrator of the US Agency for International Development devise a five-year strategy to, among other things, 'advance economic prosperity' and 'combat corruption' in El Salvador, Guatemala and Honduras.⁵² Pursuant to the Act, on 1 July 2021, the US Department of State released the 'Engel List', named after its US legislative sponsor, a directory of suspected corrupt and undemocratic actors in the Northern Triangle.⁵³ The list identifies 55 individuals, largely current and former public officials, whose visas were immediately revoked and who are subsequently barred from entering the United States.⁵⁴ Individuals on the list could

49 See Tibério de Araújo Coutinho Madruga, *Coronavírus: impacto em contratos e licitações*, *Tribuna do Norte* (10 April 2020), <http://www.tribunadonorte.com.br/noticia/coronava-rus-impacto-em-contratos-e-licitaa-a-es/477178.?.>

50 See Decree No. 593 of 14 March 2020, *Official Gazette* (El Salvador) (14 March 2020), <https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/14-03-2020.pdf>.

51 United States-Northern Triangle Enhanced Engagement Act, Pub. L. No. 116-260, Division FF, Sections 351–353, 134 Stat. 3127, 3127–31 (2020) (codified at 22 U.S.C. Sections 2277, 2277a), <https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf>.

52 *id.* Section 352(a) (codified at 22 U.S.C. Section 2277(a)).

53 See *id.* Section 353(b) (codified at 22 U.S.C. Section 2277a(b)); see also Press Statement, Blinken, Antony J, US Secretary of State, 'U.S. Releases Section 353 List of Corrupt and Undemocratic Actors for Guatemala, Honduras, and El Salvador' (1 July 2021), <https://www.state.gov/u-s-releases-section-353-list-of-corrupt-and-undemocratic-actors-for-guatemala-honduras-and-el-salvador>.

54 US Department of State, 'Report to Congress on Foreign Persons who have Knowingly Engaged in Actions that Undermine Democratic Processes or Institutions, Significant Corruption, or Obstruction of Investigations into Such Corruption in El Salvador, Guatemala, and Honduras' (1 July 2021), <https://www.state.gov/wp-content/uploads/2021/07/Congressional-Report-Section-353-Names.pdf>.

face other sanctions, including the blocking or seizure of US assets.⁵⁵ Additionally, as part of the Northern Triangle Anticorruption Task Force, on 15 October 2021, the US DOJ announced the creation of a tip line to assist its anti-corruption efforts in Central America.⁵⁶

Data privacy and implications for corporate investigations

There have been significant changes in data privacy and data protection regimes across the world during the past five years. In particular, on 25 May 2018, the European Union implemented a comprehensive data protection framework, the General Data Protection Regulation (GDPR). This new framework may govern the collection of data of Latin American companies in certain circumstances. It also has prompted several Latin American countries to re-examine their data protection regimes.⁵⁷

To date, Brazil has enacted the most comprehensive reform in the region – the General Data Protection Law (LGPD) – which entered into force in July 2019,⁵⁸ although its enforcement provisions came into effect on 1 August 2021.⁵⁹ Similar to the GDPR, the LGPD establishes a comprehensive data protection system in Brazil and imposes rules for the collection, processing, storage, use and transfer of personal data. The LGPD applies broadly, and extraterritorially, to (1) the processing or collection of personal data in Brazil, (2) the processing of data anywhere in the world related to natural persons located in Brazil or (3) the processing of personal data for the purpose of offering goods or services in Brazil.⁶⁰ The National Data Protection Authority (ANPD), which was formed

55 See Pérez, Sonia & Sherman, Christopher, 'US publishes list of corrupt officials in Central America,' AP News (1 July 2021), <https://apnews.com/article/central-america-2e864c92aab4d72e8d90939e7db58e7cc>.

56 See New Measures to Combat Corruption in Central America (footnote 10, above).

57 See Bojalil, Paulina; et al., 'Data privacy reform gains momentum in Latin America', Inter-American Development Bank Blog (12 February 2019), <https://blogs.iadb.org/conocimiento-abierto/en/data-privacy-reform-gains-momentum-in-latin-america>.

58 See Law No. 13853 of 8 July 2019 (amending Law No. 13,709), Official Gazette (Brazil) (9 July 2019), <http://www.in.gov.br/web/dou/-/lei-n-13853-de-8-de-julho-de-2019-190107897>. 'LGPD – What You Need To Know About Brazil's Data Protection Law,' Wirewheel (11 September 2020), <https://wirewheel.io/lgpd-what-you-need-to-know-about-brazils-new-data-protection-law>.

59 See Decree No. 14010 of 10 June 2020, Presidência da República (Brazil) (10 June 2020), https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l14010.htm.

60 See Decree No. 13709 of 14 August 2018, Official Gazette (Brazil) (15 August 2018), https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/36849373/do1-2018-08-15-lei-no-13-709-de-14-de-agosto-de-2018-36849337.

in August 2020, enforces the LGPD.⁶¹ Non-compliance can result in sanctions, including warnings with a time limit for taking corrective action, suspensions of processing activities that violate the law and public disclosure of the infraction.⁶² It can also include fines of up to 2 per cent of annual revenues generated in Brazil during the prior year, excluding taxes, up to a maximum of 50 million reais per infraction.⁶³

Other countries in the region have similarly taken steps to increase privacy and security protection for personal data. For example, Ecuador passed the Personal Data Protection Law on 26 May 2021, which mirrors the standards in the GDPR.⁶⁴ Enforcement will start on 26 May 2023.⁶⁵ Another example is Panama, which has enacted Law 81 of 26 March 2019 on the Protection of Personal Data.⁶⁶ The law entered into effect in March 2021.

Legislation in the United States enables US authorities to obtain data stored overseas. A law enacted in 2018 is notable in that it could enable US law enforcement to compel the production of data residing in Latin America. On 23 March 2018, then-president Donald Trump signed the Clarifying Lawful Overseas Use of Data Act (the CLOUD Act), which allows US law enforcement agents to compel US electronic communication service providers to produce data stored outside the United States in certain circumstances.⁶⁷ The CLOUD Act amended the Stored Communications Act⁶⁸ to clarify that a US electronic communication service provider must 'disclose the contents of a wire or electronic communication, and any record or other information pertaining to a customer or subscriber'

61 See Decree No. 10474 of August 26 2020, Official Gazette (Brazil) (27 August 2020), <https://www.in.gov.br/en/web/dou/-/decreto-n-10.474-de-26-de-agosto-de-2020-274389226>.

62 See Decree No. 13709 (footnote 61, above), Article 52.

63 id.

64 See Registro Oficial Suplemento No. 459 (Ecuador) (26 May 2021), <https://www.asambleanacional.gob.ec/sites/default/files/private/asambleanacional/filesasambleanacionalnameuid-29/Leyes%202013-2017/920-Imoreno/ro-459-5to-sup-26-05-2021.pdf>.

65 Flor, Mario Alejandro & Pérez Arellano, Alejandro, Ecuador – Data Protection Overview, OneTrust DataGuidance (September 2021), <https://www.dataguidance.com/notes/ecuador-data-protection-overview>.

66 Law 81 (Panama) (26 March 2019), <https://drive.google.com/file/d/15DGK6FyMQ7nIjTNSO2E3Xkq6MSq6FqRU/view>.

67 CLOUD Act, Pub. L. No. 115-141, Division V, Sections 101–106, 132 Stat. 1213, 1213–25 (23 March 2018) (codified in scattered sections of 18 U.S.C.), <https://www.congress.gov/115/plaws/publ141/PLAW-115publ141.pdf>.

68 18 U.S.C. Sections 2701–2713.

within its possession, custody or control, regardless of where the data is located.⁶⁹ Service providers can challenge warrants seeking data if they reasonably believe that the customer or subscriber that is the subject of the warrant 'is not a United States person and does not reside in the United States' or if the disclosure would 'create a material risk that the provider would violate the laws of a qualifying foreign government'.⁷⁰ The CLOUD Act also allows certain foreign governments to enter into bilateral agreements with the United States and request data directly from US electronic communication service providers, instead of through a mutual legal assistance treaty.⁷¹ As of this writing, the US has CLOUD Act agreements with the UK and Australia.⁷²

69 18 U.S.C. Section 2713 (enacted by CLOUD Act Section 103(a)(1)).

70 18 U.S.C. Section 2703(h)(2)(A) (enacted by CLOUD Act Section 103(b)).

71 See 18 U.S.C. Section 2523 (enacted by CLOUD Act Section 105(a)).

72 Press release, US Department of State, 'U.S. and UK Sign Landmark Cross-Border Data Access Agreement to Combat Criminals and Terrorists Online (3 October 2019), <https://www.justice.gov/opa/pr/us-and-uk-sign-landmark-cross-border-data-access-agreement-combat-criminals-and-terrorists>. Press release, US DOJ, United States and Australia Enter CLOUD Act Agreement to Facilitate Investigations of Serious Crime (15 December 2021), <https://www.justice.gov/opa/pr/united-states-and-australia-enter-cloud-act-agreement-facilitate-investigations-serious-crime>.

Recent enforcement trends

Covid-related corruption investigations

As noted above, the urgent need for governments across Latin America to provide medical equipment and services has led regulators to relax public procurement requirements.⁷³ This covid-related change fosters ample opportunity for corruption, particularly in the healthcare industry. Vaccine procurement and distribution pose additional corruption risks.⁷⁴

It is therefore not surprising that a number of countries have announced investigations or prosecutions of corruption related to government purchases of medical supplies, such as protective masks, sanitiser, ventilators and body bags.⁷⁵ For example:

- **Argentina:** authorities are investigating the sale of expired surgical masks to the city of Buenos Aires at 10 times their listed price.⁷⁶
- **Brazil:** authorities are investigating contracts and purchases totalling over 1 billion reais (US\$200 million), including conduct of three state governors, in covid-related corruption investigations.⁷⁷ One of these governors, Wilson Witzel, was impeached in April 2021 owing to alleged kickbacks tied to the

73 See Simon, Roberto & Aalbers, Geert, 'The Capacity to Combat Corruption (CCC) Index' at 1 (2020) (AS/COA and Control Risks) [hereinafter 'The Capacity to Combat Corruption (CCC) Index'], https://www.as-coa.org/sites/default/files/archive/CCC_Report_2020_Updated.pdf. Harris, Bryan, Schipani, Andres & Long, Gideon, 'Coronavirus corruption cases spread across Latin America', *Financial Times* (7 July 2020) [hereafter 'Coronavirus corruption cases spread across Latin America'], <https://www.ft.com/content/94c87005-7eb1-47c4-9698-5afb2b12ab54>. Levine, Andrew, Yannett, Bruce & Archanjo, Fabricio, 'Compliance Tips Amid Rising Fraud Risk in Latin America', *Law360* (31 August 2020), <https://www.law360.com/articles/1305800/compliance-tips-amid-rising-fraud-risk-in-latin-america>. Kitroeff, Natalie, & Taj, Mitra, 'Latin America's Virus Villains: Corrupt Officials Collude With Price Gougers for Body Bags and Flimsy Masks', *New York Times* (20 June 2020) [hereinafter 'Latin America's Virus Villains'], <https://www.nytimes.com/2020/06/20/world/americas/coronavirus-latin-america-corruption.html>.

74 See Press release, United Nations Office on Drugs and Crime, 'UNODC Addresses Corruption Risks Related to COVID-19 Vaccines' (10 December 2020), <https://www.unodc.org/unodc/en/frontpage/2020/December/unodc-addresses-corruption-risks-related-to-covid-19-vaccines.html>. 'Covid-19 Vaccines and Corruption Risks: Preventing Corruption in the Manufacture, Allocation and Distribution of Vaccines', United Nations Office on Drugs and Crime (9 December 2020), https://www.unodc.org/documents/corruption/COVID-19/Policy_paper_on_COVID-19_vaccines_and_corruption_risks.pdf.

75 See, e.g., 'Latin America's Virus Villains' (footnote 74, above).

76 See Goodman, Joshua, 'Spread of coronavirus fuels corruption in Latin America,' AP News (27 May 2020), <https://apnews.com/article/a240ff413fb23220aff30c6d6e6aba4c>.

77 See 'Coronavirus corruption cases spread across Latin America' (footnote 74, above).

development of field hospitals intended to combat covid-19.⁷⁸ Additionally, the Attorney General is investigating officials of the Bolsonaro administration regarding an alleged corrupt vaccine procurement scheme, and the president himself for allegedly having learned of the allegations and not having alerted the authorities.⁷⁹

- Bolivia: in May 2020, the health minister was arrested for allegedly purchasing 170 ventilators from a distributor for quadruple their original sale price and double the cost of other available options.⁸⁰
- Colombia: the Inspector General is investigating hundreds of corruption cases relating to contracts for covid-related emergency supplies.⁸¹
- Ecuador: in May 2020, prosecutors identified a criminal ring that had allegedly colluded with health officials to win a contract selling body bags to hospitals at inflated prices.⁸² In June 2021, one individual involved was sentenced to 13 years in prison.⁸³ As of October 2021, prosecutors were investigating over 172 covid-related corruption cases, though progress had been slow.⁸⁴ Further, the Health Ministry was raided in March 2021 in furtherance of an investigation focused on corruption in vaccine distribution.⁸⁵

78 Olivares, Pilar, 'Rio de Janeiro governor impeachment confirmed over alleged COVID-19-related graft', *Reuters* (30 April 2021), <https://www.reuters.com/world/americas/rio-de-janeiro-governor-impeachment-confirmed-over-alleged-covid-19-related-2021-05-01>. see also McCoy, Terrence, 'Rio's governor suspended amid widening corruption probe involving Brazil's pandemic response,' *The Washington Post* (28 August 2020), https://www.washingtonpost.com/world/the_americas/brazil-coronavirus-corruption-rio/2020/08/28/fe213756-e918-11ea-970a-64c73a1c2392_story.html. 'Coronavirus corruption cases spread across Latin America' (footnote 74, above).

79 'Peru among the most corrupt countries around the COVID-19 pandemic', CE Noticias Financieras English (7 July 2021) [hereinafter 'Peru among the most corrupt countries'].

80 See Montenegro Almonte, Alejandra & Bates, Gregory, 'Corruption and Coronavirus in Latin America: Best Practices to Prevent Corruption During COVID-19', *Corporate Compliance Insights* (8 September 2020) [hereinafter 'Corruption and Coronavirus in Latin America'], <https://www.corporatecomplianceinsights.com/corruption-coronavirus-latin-america-covid>.

81 See 'Latin America's Virus Villains' (footnote 74, above).

82 See id.

83 'Peru among the most corrupt countries' (footnote 80, above).

84 '[Ecuador] Corruption cases during pandemic record slow progress', BH Compliance (14 October 2021), <https://www.bh-compliance.com/en/ecuador-corruption-cases-during-pandemic-record-slow-progress>.

85 'Ecuadorian police raid Health Ministry in COVID-19 vaccine corruption probe', *Xinhua Net* (18 March 2021), http://www.xinhuanet.com/english/2021-03/18/c_139817831.htm.

- Guatemala: the anti-corruption prosecutor's office is investigating vaccine purchase irregularities and faulty covid-19 tests.⁸⁶
- Mexico: more than 80 per cent of all public contracts are directly awarded,⁸⁷ and covid-19 deepened corruption issues. Among other cases, authorities are investigating the purchase of ventilators by a federal hospital at a price 85 per cent higher than other available options; the ventilators were purchased from the son of the head of the state-owned Federal Electricity Commission.⁸⁸
- Panama: Panama's Public Ministry (Ministerio Público) is investigating the purchase of 100 ventilators at inflated prices.⁸⁹

In an effort to address the risk of corruption in covid-related public procurement, 13 Latin American chapters of Transparency International put forth a set of proposals in March 2020.⁹⁰ These proposals were aimed at maximising information sharing, competition, supervision, disclosure, and accountability.⁹¹ Nonetheless, enforcement efforts in some countries have been hindered throughout the pandemic. Specifically:

- El Salvador: in May 2021, the legislature enacted a law providing government officials and external contractors with retroactive civil and criminal immunity for pandemic-related spending.⁹²

86 'Peru among the most corrupt countries' (footnote 80, above).

87 See Núñez, Alejandro & Martínez, Javier, 'Promesas incumplidas de la 4T: 80.6% de los contratos de 2021 han sido entregados por adjudicación directa,' Mexicanos Contra la Corrupción y la Impunidad (5 July 2021), <https://contralacorrupcion.mx/promesas-incumplidas-de-la-4t-80-6-de-los-contratos-de-2021-han-sido-entregados-por-adjudicacion-directa>.

88 See 'Corruption and Coronavirus in Latin America' (footnote 81, above); Sanchez Ley, Laura & Olmos, Raúl, 'Hijo de Bartlett vendió al gobierno el ventilador Covid-19 más caro,' Mexicanos Contra la Corrupción y la Impunidad (1 May 2020), <https://contralacorrupcion.mx/hijo-bartlett-ventilador-covid-19>.

89 'Ministerio Público inicia investigación de oficio', Panamanian Public Ministry (25 April 2020), <https://ministeriopublico.gob.pa/ministerio-publico-inicia-investigacion-de-oficio>.

90 'Coronavirus Sparks High Risk of Corruption Across Latin America', Transparency International (26 March 2020), <https://www.transparency.org/en/press/coronavirus-sparks-high-risk-of-corruption-across-latin-america>.

91 id.

92 Lemus and Martínez, 'Top Bukele Official Embezzled \$1.6 Million in Covid-19 Emergency Food Supplies', El Faro (12 September 2021), [https://elfaro.net/en/202109/el_salvador/25736/Top-Bukele-Official-Embezzled-\\$16-Million-in-Covid-19-Emergency-Food-Supplies.htm](https://elfaro.net/en/202109/el_salvador/25736/Top-Bukele-Official-Embezzled-$16-Million-in-Covid-19-Emergency-Food-Supplies.htm).

- Guatemala: in July 2021, the head of the Guatemalan Special Prosecutor's Office Against Corruption and Impunity fled the country after the Attorney General removed him from his post.⁹³
- Honduras: lawmakers passed a new criminal code that reduced penalties for corruption convictions and added additional hurdles to prosecuting government officials.⁹⁴
- Mexico: owing to pandemic-related austerity measures, Mexico halted the implementation of its National Anti-corruption System and severely cut the programme's budget⁹⁵ and may even be considering the elimination of critical bodies of the National Anti-corruption System.

In the United States, both the US DOJ and the US SEC announced early in the pandemic that their enforcement efforts and resources would be directed at combating covid-related misconduct,⁹⁶ as well as the continuing enforcement of all federal laws.⁹⁷ In a December 2021 press release, the Treasury Department noted that '[c]orruption involving procurement of life-saving medical supplies represents a profound betrayal of public trust and a waste of critically needed resources', and issued a series of related sanctions against two entities and six individuals, including the chief of staff to the president of El Salvador and a former official within the Guatemalan Ministry of Public Health.⁹⁸

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- 93 'Guatemalan anti-corruption prosecutor flees country after sacking', Aljazeera (24 July 2021), <https://www.aljazeera.com/news/2021/7/24/guatemala-anti-corruption-prosecutor-flees-country-after-sacking>.
- 94 Jorgic, Drazen, 'A corruption-busting Honduran prosecutor took on the president. It didn't end well', *Reuters* (29 October 2021), <https://www.reuters.com/investigates/special-report/honduras-corruption-prosecutor>.
- 95 'The Capacity to Combat Corruption (CCC) Index' at 21 (footnote 74, above).
- 96 See Attorney General Barr, 'COVID-19 – Department of Justice Priorities', US DOJ (16 March 2020), <https://www.justice.gov/archives/ag/page/file/1258676/download>. see also SEC Coronavirus (COVID-19) Response, US SEC (29 December 2020), <https://www.sec.gov/sec-coronavirus-covid-19-response>.
- 97 See Deputy Attorney General Rosen, 'Continuing to Investigate and Prosecute Federal Crime', US DOJ (18 March 2020), <https://www.justice.gov/file/1268696/download>. see also SEC Coronavirus (COVID-19) Response, US SEC (16 March 2020), <https://www.sec.gov/sec-coronavirus-covid-19-response>.
- 98 Press release, US Department of the Treasury, 'Treasury Issues Sanctions on International Anti-Corruption Day' (9 December 2021), <https://home.treasury.gov/news/press-releases/jy0523#:~:text=13818%2C%20which%20builds%20upon%20and,and%20serious%20human%20rights%20abuse>.

State-owned entities

Operation Car Wash: Petrobras and beyond

After almost seven years of investigating corruption schemes in Brazil and elsewhere, *Operation Car Wash* was officially disbanded at the beginning of February 2021.⁹⁹ Although *Operation Car Wash* began with Petróleo Brasileiro SA (Petrobras), Brazil's state-controlled energy company, many other state-owned or state-controlled enterprises were implicated across Latin America. Companies interacting with state-owned or state-controlled enterprises in Latin America should scrutinise these interactions.

Between December 2016 and December 2017, at least four companies reached resolutions with the US DOJ or the US SEC (or both), acknowledging bribe payments made to or through Petrobras executives, as well as, in some instances, additional improper payments to other government or state-owned entities (SOEs) or officials.¹⁰⁰ The alleged misconduct of these companies spanned Latin America – including alleged payments in Argentina, Brazil, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Peru and Venezuela. In connection with the US resolutions, the Brazilian authorities were also able to secure independent settlements with all four companies.¹⁰¹ In 2020, the US

99 See Brito, Ricardo, 'After Seven Years, Brazil Shuts Down Car Wash Anti-Corruption Squad', *Reuters* (3 February 2021), <https://www.reuters.com/article/us-brazil-corruption-idUSKBN2A4068>.

100 See, e.g., Non-Prosecution Agreement, Petróleo Brasileiro S.A. – Petrobras (26 September 2018), <https://www.justice.gov/opa/press-release/file/1096706/download>. Press release, US DOJ, 'SBM Offshore N.V. and U.S.-based Subsidiary Resolve Foreign Corrupt Practices Act Case Involving Bribes in Five Countries' (29 November 2017), <https://www.justice.gov/opa/pr/sbm-offshore-nv-and-united-states-based-subsidiary-resolve-foreign-corrupt-practices-act-case>. Press release, US DOJ, 'Keppel Offshore & Marine Ltd. and U.S.-Based Subsidiary Agree to Pay \$422 Million in Global Penalties to Resolve Foreign Bribery Case' (22 December 2017), <https://www.justice.gov/usao-edny/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global>. Press release, US DOJ, 'Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History' (21 December 2016), <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>.

101 See, e.g., 'Keppel Offshore & Marine Reaches Global Resolution with Authorities in the U.S., Brazil and Singapore', Keppel Offshore & Marine (23 December 2017), www.keppelom.com/en/news-item.aspx?sid=2605&aid=5875&title=keppel-offshore-marine-reaches-global-resolution-with-authorities-in-the-us-brazil-and-singapore. Press release, SBM Offshore, 'SBM Offshore achieves settlement with Dutch Public Prosecutor's Office over alleged improper payments. United States Department of Justice closes

DOJ resolved charges with two more companies for corrupt conduct related to Petrobras¹⁰² and resolved charges with yet another company for corrupt payments related to Petrobras in 2021.¹⁰³

Following Odebrecht's December 2016 resolution with US, Brazilian and Swiss authorities, prosecutors from Brazil and 10 other Latin American countries formed a task force to investigate potential bribes paid by the company, emphasising information sharing and cooperation in the region.¹⁰⁴ As a result of its efforts to cooperate, the company has reached agreements with prosecutors in at least six countries in Latin America.

On 26 September 2018, Petrobras agreed to pay US\$1.78 billion – at the time, the largest single US Foreign Corrupt Practices Act (FCPA) resolution – to resolve investigations by the US DOJ, the US SEC and Brazilian authorities.¹⁰⁵ Petrobras acknowledged that Petrobras executives 'facilitated massive bid-rigging and bribery schemes that, among other things, allowed contractors to obtain contracts from Petrobras through non-competitive means and caused Petrobras to remain in the favour of many of Brazil's politicians and political parties'.¹⁰⁶

out the matter' (12 November 2014), <https://www.sbmoffshore.com/newsroom/press-releases/2014/12-11-2014/sbm-offshore-achieves-settlement-dutch-public-prosecutors>.

102 See Deferred Prosecution Agreement at A-15, A-18, *United States v. Vitol Inc.*, No. 20-539 (E.D.N.Y. 3 December 2020) [hereinafter Vitol Deferred Prosecution Agreement, 3 December 2020], <https://www.justice.gov/criminal-fraud/file/1346651/download>. Press release, US DOJ, 'Sargeant Marine Inc. Pleads Guilty and Agrees to Pay Over \$16 Million in Criminal Fines to Resolve Foreign Bribery Case' (22 September 2020) [hereinafter Sargeant Marine Press Release, 22 September 2020], <https://www.justice.gov/usao-edny/pr/sargeant-marine-inc-pleads-guilty-and-agrees-pay-over-16-million-criminal-fines-resolve>.

103 See Press release, US DOJ, 'Amec Foster Wheeler Energy Limited Agrees to Pay Over \$18 million to Resolve Charges Related to Bribery Scheme in Brazil' (25 June 2021), <https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery>.

104 See Boadle, Anthony, 'Latin American prosecutors join forces on Odebrecht bribes', *Reuters* (17 February 2017), <https://www.reuters.com/article/idUSL1N1G200Y>.

105 Press release, US DOJ, 'Petróleo Brasileiro S.A. – Petrobras Agrees to Pay More Than \$850 Million for FCPA Violations' (27 September 2018) [hereinafter 'Petrobras Agrees to Pay More Than \$850 Million'], <https://www.justice.gov/opa/pr/petr-leo-brasileiro-sa-petrobras-agrees-pay-more-850-million-fcpa-violations>. Press release, US SEC, 'Petrobras Reaches Settlement With SEC for Misleading Investors' (27 September 2018) [hereinafter 'Petrobras Reaches Settlement With SEC'], <https://www.sec.gov/news/press-release/2018-215>.

106 See Non-Prosecution Agreement at A-4, *Petróleo Brasileiro S.A. – Petrobras* (26 September 2018), <https://www.justice.gov/opa/press-release/file/1096706/download>.

As part of its resolution, Petrobras agreed to cooperate with other current investigations into related conduct.¹⁰⁷ Both US and Latin American authorities have been active in prosecuting companies that paid bribes to and through Petrobras executives. Since the resolution of the Petrobras investigation in September 2018, the US DOJ and the US SEC have, individually or jointly, reached resolutions with at least five additional companies for Petrobras-related misconduct.¹⁰⁸

Other SOEs

Operation Car Wash led investigators far beyond Petrobras. In April 2015, Brazilian prosecutors reported evidence of fraud at the country's health ministry and at state-owned bank Caixa Econômica Federal.¹⁰⁹ In October 2020, J&F Investimentos S.A. (J&F), a Brazil-based investment company, as well as its subsidiary JBS S.A., resolved enforcement actions with both the US DOJ and US SEC. The company admitted to making nearly US\$150 million in corrupt payments to high-ranking Brazilian government officials, including almost US\$25 million to a member of the legislative branch of the Brazilian government in exchange for securing hundreds of millions in financing from Caixa

107 id. at 3.

108 Press release, US SEC, 'Vantage Drilling International Agrees to Settle FCPA Charges' (19 November 2018), <https://www.sec.gov/enforce/34-84617-s>. Press release, US DOJ, 'Samsung Heavy Industries Company Ltd Agrees to Pay \$75 Million in Global Penalties to Resolve Foreign Bribery Case' (22 November 2019), <https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign>. Press release, US DOJ, 'TechnipFMC Plc and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Penalties to Resolve Foreign Bribery Case' (25 June 2019), [https://www.justice.gov/opa/pr/technipfmc-plc-and-us-based-subsidiary-agree-pay-over-296-million-global-penalties-resolve#:~:text=\(Technip%20USA\)%2C%20have%20agreed,the%20United%20States%20and%20Brazil.&text=Technip%20USA%20and%20Technip's%20former,in%20connection%20with%20the%20resolution](https://www.justice.gov/opa/pr/technipfmc-plc-and-us-based-subsidiary-agree-pay-over-296-million-global-penalties-resolve#:~:text=(Technip%20USA)%2C%20have%20agreed,the%20United%20States%20and%20Brazil.&text=Technip%20USA%20and%20Technip's%20former,in%20connection%20with%20the%20resolution). Press release, US DOJ, 'Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador' (22 September 2020), <https://www.justice.gov/opa/pr/sargeant-marine-inc-pleads-guilty-and-agrees-pay-166-million-resolve-charges-related-foreign>.

109 Jelmayer, Rogerio & Magalhaes, Luciana, 'CEO of Brazil's Eletronuclear Arrested in Wide Corruption Probe', *The Wall Street Journal* (28 July 2015) [hereinafter 'CEO of Brazil's Eletronuclear Arrested in Wide Corruption Probe'], https://www.wsj.com/articles/brazil-car-wash-corruption-probe-spreads-to-eletronuclear-1438091569?mod=article_inline.

Econômica Federal.¹¹⁰ J&F also made bribe payments to an executive at Banco Nacional de Desenvolvimento Econômico e Social (BNDES), another Brazilian state-owned and -controlled bank.¹¹¹

Brazil's state-owned electric utility, Centrais Elétricas Brasileiras SA (Eletrobras), has also been the focus of anti-corruption investigations by both Brazilian and US authorities. In July 2015, Brazilian authorities arrested the chief executive of Eletrobras and executed nearly two dozen related search warrants.¹¹² In October 2016, Eletrobras disclosed that it was cooperating with the US DOJ, the US SEC, Brazilian authorities and others.¹¹³ In August 2018, Eletrobras disclosed that the US DOJ declined to prosecute the company for FCPA violations but, in December 2018, Eletrobras paid US\$2.5 million to settle US SEC charges that it violated the books and records and internal controls provisions of the FCPA.¹¹⁴

Operation Car Wash has also brought investigators to state-owned enterprises in other countries. For example, in December 2016, after the investigation unearthed allegations that bribes were paid to an executive of a Mexican state-owned and state-controlled company, Petróleos Mexicanos (PEMEX) began investigating whether any of its executives received illicit payments in connection with the scheme.¹¹⁵ In July 2019, the Mexican Attorney General's Office announced arrest warrants against former CEO Emilio Lozoya and members of his family in connection with crimes identified by *Operation Car Wash*.¹¹⁶ PEMEX stated that it was cooperating with Mexican, US and other government

110 Press Release, US DOJ, 'J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case' (14 October 2020) [hereinafter J&F Press Release, 14 October 2020], <https://www.justice.gov/opa/pr/jf-investimentos-sa-pleads-guilty-and-agrees-pay-over-256-million-resolve-criminal-foreign>. Press Release, US SEC, 'SEC Charges Brazilian Meat Producers With FCPA Violations' (14 October 2020) [hereinafter SEC Charges Brazilian Meat Producers With FCPA Violations'], <https://www.sec.gov/news/press-release/2020-254>.

111 J&F Press Release, 14 October 2020 (footnote 111, above).

112 'CEO of Brazil's Eletronuclear Arrested in Wide Corruption Probe' (footnote 110, above).

113 Eletrobras, Annual Report (Form 20-F) (11 October 2016), <https://www.sec.gov/Archives/edgar/data/0001439124/000119312516735791/d204633d20f.htm>.

114 Press release, US SEC, 'SEC Charges Eletrobras with Violating Books and Records and Internal Accounting Controls Provisions of the FCPA' (26 December 2018), <https://www.sec.gov/enforce/34-84973-s>.

115 Petróleos Mexicanos (Form 6-K) (29 September 2017), https://www.pemex.com/ri/reguladores/Informacion%20SEC/Form%206-K_20170929.pdf.

116 Petróleos Mexicanos (Form 6-K) (11 September 2019), <https://www.pemex.com/ri/reguladores/Informacion%20SEC/Form%206-K%20A,%20filed%20Sep11,%202019.pdf>.

authorities in connection with the investigation.¹¹⁷ In November 2021, a Mexican judge ordered Lozoya to jail pending his corruption trial.¹¹⁸ Though he offered testimony about bribery and corruption involving other state officials, the judge ruled his accusations had not done enough to help prosecutors and that he was a flight risk.¹¹⁹

During the past few years, US authorities have undertaken sweeping investigations of alleged corruption at state-owned and state-controlled entities in Venezuela and Ecuador. Although these have largely resulted in individual enforcement actions, in 2020, the US DOJ resolved two corporate investigations related to corruption schemes in Venezuela and Ecuador, which included corrupt payments to Empresa Pública de Hidrocarburos del Ecuador (PetroEcuador), a state-owned oil company in Ecuador, and Petroleos de Venezuela S.A. (PdVSA), a Venezuelan state-owned and -controlled oil company.¹²⁰

In June 2019, Citgo Petroleum Corp (Citgo) confirmed that it received a subpoena requesting information relating to bribery in Venezuela. Citgo has been implicated in certain individuals' guilty pleas but has not been publicly charged nor has it reached a public corporate resolution.¹²¹ In August 2020, the US DOJ announced an indictment against a former procurement officer and manager at Citgo that charged the official with accepting and directing bribe payments from various businessmen in exchange for assisting with business opportunities at Citgo and PdVSA.¹²² This latest indictment is part of a larger US DOJ investigation in which 27 individuals have been charged with crimes related to

117 Petróleos Mexicanos (Form 20-F) (8 May 2020), https://www.pemex.com/ri/reguladores/ReportesAnuales_SEC/20-F%202019%20PDF.pdf.

118 See 'Judge in Mexico orders ex-head of state oil company jailed', Associated Press (3 November 2021), <https://apnews.com/article/business-mexico-caribbean-mexico-city-e2fde527b27b7083c1cee9fa12ef86c5>.

119 id.

120 Sargeant Marine Press Release, 22 September 2020 (footnote 103, above).

121 See Wethe, David; Kassai, Lucia, 'Citgo Gets U.S. Subpoena Related to Venezuela Bribery Probe', *Bloomberg* (3 June 2019), <https://www.bloomberg.com/news/articles/2019-06-03/citgo-gets-u-s-subpoena-related-to-venezuela-bribery-probe>.

122 Indictment, *United States v. Jose Luis De Jongh-Atencia*, No. 4:20-CR-305 (S.D. Tex. 16 July 2020), <https://www.justice.gov/criminal-fraud/file/1307276/download>. Press release, US DOJ, 'Former Venezuelan Official Charged in Connection with International Bribery and Money Laundering Scheme' (6 August 2020) [Citgo Press Release, 6 August 2020], <https://www.justice.gov/opa/pr/former-venezuelan-official-charged-connection-international-bribery-and-money-laundering>.

bribery at PdVSA.¹²³ In March 2021, an official from Citgo pleaded guilty for his role in laundering millions of dollars in bribes and corruptly providing business advantages with Citgo and PdVSA.¹²⁴ Further, in August 2021, US authorities announced an indictment against an American business executive alleging he made corrupt payments to officials at Venezuela's state-owned food corporation Corporación de Abastecimiento y Servicios Agrícola (CASA) and officials involved in joint ventures with PdVSA.¹²⁵ Finally, in October 2021, the DOJ announced an indictment against five defendants stemming from corruption claims involving another state-owned entity, Comité Local de Abastecimiento y Producción (CLAP), a Venezuelan state-controlled food and medicine distribution programme.¹²⁶

Similarly, while the US DOJ's investigation has not yet resulted in the prosecution of PetroEcuador, the US DOJ has prosecuted individuals and some companies for paying bribes to PetroEcuador officials.¹²⁷ In cases against individuals, PetroEcuador has tried to establish its victim status and entitlement to restitution, arguing that it was unaware of the bribery scheme and suffered financial losses as a direct result of the criminal acts.¹²⁸ Requests for victim status by

123 Citgo Press Release, 6 August 2020 (footnote 123, above); see also Indictment, *United States v. Natalino D'Amato*, No. 1:20-cr-20241-KMW (S.D. Fla. 24 November 2020), <http://fcpa.stanford.edu/fcpac/documents/5000/004182.pdf>. Information, *United States v. Carlos Enrique Urbano Fermin*, No. 1:20-cr-20163-RNS (S.D. Fla. 20 March 2020), <http://fcpa.stanford.edu/fcpac/documents/5000/004084.pdf>.

124 See Press Release, US DOJ, 'Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme' (23 March 2021), <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>.

125 See Press Release, US DOJ, 'Executive Arrested and Charged for Bribery and Money-Laundering Scheme' (4 August 2021), <https://www.justice.gov/opa/pr/executive-arrested-and-charged-bribery-and-money-laundering-scheme>. Indictment, *United States v. Naman Wakil*, No. 21-20406-CR (S.D. Fla. 29 July 2021), <https://www.justice.gov/criminal-fraud/file/1430096/download>.

126 See Press Release, US DOJ, 'Five Individuals Charged with Money Laundering in Connection with Alleged Venezuela Bribery Scheme' (21 October 2021), <https://www.justice.gov/opa/pr/five-individuals-charged-money-laundering-connection-alleged-venezuela-bribery-scheme>.

127 See Vitol Deferred Prosecution Agreement, 3 December 2020 (footnote 103, above); Sargeant Marine Press Release, 22 September 2020 (footnote 103, above).

128 See e.g., Petitioner Victim PetroEcuador's Memorandum of Law in Support of Motion for Recognition of its Rights as a Victim and Entitlement to Restitution, *United States v. Chatburn*, No. 1:18-cr-20312-CR-Cooke (S.D. Fla. 13 December 2019); EP PetroEcuador's Memorandum of Law in Support of Motion for Recognition of its Rights as a Victim and Entitlement to Restitution, *United States v. Baquerizo*, No. 1:18-cr-20596-DPG (S.D. Fla. 18

state-owned enterprises – including PetroEcuador – have been unsuccessful in US courts.¹²⁹ For example, in a September 2019 ruling rejecting PetroEcuador's motion for victim status, the court noted that 'the level of pervasive, constant, and consistent illegal conduct among EP PetroEcuador's principals was sufficient to preclude EP PetroEcuador from being recognised as a victim under the MVRA'.¹³⁰ Similar motions by Instituto Costarricense de Electricidad of Costa Rica and Bariven SA, a subsidiary of PdVSA, were rejected.¹³¹

Coordination among US enforcement agencies

In May 2018, the US DOJ formalised its position on coordination among US law enforcement and regulatory agencies and their non-US counterparts in a policy requiring US DOJ attorneys to coordinate internally, with other law enforcement partners in the United States and counterparts abroad (the Anti-Piling On Policy).¹³² The Anti-Piling On Policy recognises that '[w]hen multiple law enforcement and regulatory agencies pursue a single defendant for the same or substantially similar conduct', the result may be 'unwarranted and disproportionate

January 2019); Petitioner Victim PetroEcuador's Memorandum of Law in Support of Motion for Recognition of its Rights as a Victim and Entitlement to Restitution, *United States v. Cisneros*, No. 1:19-cr-20284-RS (S.D. Fla. 25 October 2019).

129 See Hudson, Clara, 'PetroEcuador is not a victim, Miami judge says', *Global Investigations Review* (23 September 2019), <https://globalinvestigationsreview.com/article/jac/1197882/petroecuador-is-not-a-victim-miami-judge-says>. Godoy, Jody, 'Lawyered-Up Suspect Says Taped Calls Violated Ethics Rule', *Law360* (22 May 2019), <https://www.law360.com/articles/1162008/lawyered-up-suspect-says-taped-calls-violated-ethics-rule>.

130 Omnibus Report and Recommendation, *United States v. Baquerizo*, No. 1:18-cr-20596-DPG (S.D. Fla. 20 September 2019) (internal citation omitted).

131 See 'ICE Again Gets A Chilly Response From The 11th Circuit', *FCPA Professor* (6 August 2012), <http://fcpaprofessor.com/ice-again-gets-a-chilly-response-from-the-11th-circuit> (summarising Instituto Costarricense de Electricidad of Costa Rica's [ICE] failed attempt at petitioning for victim status in the Alcatel-Lucent bribery case at trial level and in its efforts to appeal before the 11th Circuit); 'PdVSA "Victim" Petition Denied', *FCPA Professor* (28 February 2017), <http://fcpaprofessor.com/pdvsa-victim-petition-denied> (summarising the unsuccessful attempt of Bariven SA, a subsidiary of Petr leos de Venezuela, SA [PdVSA], to get victim status and restitution; the US DOJ argued that Bariven was merely trying to gain access to sensitive and confidential information about its investigation into bribery and corruption at Bariven and its parent, PdVSA).

132 US DOJ, Justice Manual Section 1-12.100 – Coordination of Corporate Resolution Penalties in Parallel and/or Joint Investigations and Proceedings Arising from the Same Misconduct (May 2018) [hereinafter Justice Manual 1-12.100], <https://www.justice.gov/jm/jm-1-12000-coordination-parallel-criminal-civil-regulatory-and-administrative-proceedings#1-12.100>.

penalties for that conduct'.¹³³ Coordination among regulators avoids 'unfair duplicative penalties' that 'deprive[s] a company of the benefits of certainty and finality ordinarily available through a full and final settlement'.¹³⁴ The Anti-Piling On Policy consists of four principles, which apply to the US DOJ's cooperation with other US regulators and with foreign authorities:

- The US DOJ should not 'use criminal enforcement authority unfairly to extract, or to attempt to extract, additional civil or administrative monetary payments'.¹³⁵ For example, the US DOJ 'should not employ the threat of criminal prosecution solely to persuade a company to pay a larger settlement in a civil case'.¹³⁶
- US DOJ attorneys in different departments should coordinate with each other – be it through 'crediting and apportionment of financial penalties, fines, and forfeitures, [or] other means of avoiding disproportionate punishment' – to 'achieve an overall equitable result'.¹³⁷
- The US DOJ should 'endeavor, as appropriate, to coordinate with and consider the amount of fines, penalties, and/or forfeiture paid to other federal, state, local, or foreign enforcement authorities that are seeking to resolve a case with a company for the same misconduct'.¹³⁸
- The US DOJ should consider whether multiple resolutions with different regulators are necessary for the 'interests of justice to be fully vindicated'. Some of the relevant factors include the egregiousness of the conduct, statutory penalties, risk of delay in reaching a resolution, and the company's level of cooperation with the government.¹³⁹

This policy does not require the US DOJ to refrain from imposing its own penalties for conduct also investigated and penalised by other US and non-US enforcement agencies. The policy merely requires US DOJ prosecutors to consider

133 Deputy Associate Attorney General Stephen Cox, Remarks as Prepared for the Cleveland, Tennessee, Rotary Club (12 March 2019), <https://www.justice.gov/opa/speech/deputy-associate-attorney-general-stephen-cox-gives-remarks-cleveland-tennessee-rotary>.

134 Deputy Attorney General Rod Rosenstein, Remarks as Prepared for the New York City Bar White Collar Crime Institute, New York (9 May 2018) [hereinafter Rosenstein Remarks, 9 May 2018], <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar>.

135 Justice Manual 1-12.100 (footnote 133, above).

136 Rosenstein Remarks, 9 May 2018 (footnote 135, above).

137 *id.*

138 Justice Manual 1-12.100 (footnote 133, above).

139 *id.*

whether multiple resolutions are necessary – the US DOJ is free to conclude that, for example, conduct that it perceives to be egregious warrants multiple penalties imposed by different authorities, or that a company's failure to cooperate militates in favour of prosecution.¹⁴⁰ Although it is common for new US DOJ leadership to re-evaluate the policies of prior administrations, to date, the Biden Administration has not signalled an intention to depart from the Anti-Piling On Policy.¹⁴¹

Latin American companies whose shares or American Depositary Receipts (ADRs) are publicly traded in the United States are subject to US SEC regulation. The Anti-Piling On Policy may be useful to companies facing US DOJ and US SEC investigations because it provides a basis to contend that the imposition of substantial penalties by both agencies would be unnecessary and unwarranted. Indeed, the Anti-Piling On Policy encourages US DOJ attorneys to coordinate with other agencies where possible – including the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of the Foreign Assets Control, in addition to the US SEC – to better 'detect sophisticated financial fraud schemes and deploy adequate penalties and remedies to ensure market integrity'.¹⁴²

In the anti-corruption space in particular, a company that is headquartered or conducts business in Latin America and is publicly traded in the United States (including through ADRs) may be subject to investigations and penalties by both the US DOJ and the US SEC for the same alleged violations of the FCPA. In a speech on 3 October 2019, then-US Attorney General William Barr reiterated the US DOJ's commitment to coordination, particularly with the US SEC: 'Critically . . . if a company meets the benchmarks of good corporate behavior,

140 See, e.g., Dobrik, Adam 'Beam Suntory case highlights piling-on tension' (5 November 2020), <https://globalinvestigationsreview.com/just-anti-corruption/beam-suntory-case-highlights-piling-tension>.

141 See Vanderford, Richard, 'For Anticorruption Enforcement Under Biden, Big Policy Shifts Unlikely', MLex (25 January 2021), <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/for-anticorruption-enforcement-under-biden-big-policy-shifts-unlikely> ('Another signature anticorruption enforcement policy, the "no piling on" policy announced by then-Deputy Attorney General Rod Rosenstein, is likely to persist.').

142 Rosenstein Remarks, 9 May 2018 (footnote 135, above).

the [US] DOJ can use its discretion to act in deference to a[] [US] SEC parallel resolution'. Barr also cited examples where the US DOJ declined to prosecute companies who had resolved claims with the US SEC.¹⁴³

Recent enforcement actions suggest that the US DOJ has a continued willingness to decline to prosecute in cases where the client resolved claims with other regulators. For example, of the seven companies to which the US DOJ has issued formal declinations since 2018, five involved publicly traded US companies that reached resolutions with the US SEC,¹⁴⁴ and one involved a UK-based company that was under investigation by UK authorities.¹⁴⁵ This signals that when a company fully resolves corruption-related violations with another enforcement agency – whether in the United States or elsewhere – the US DOJ may be less inclined to bring its own charges, particularly if the company has taken certain

143 US Attorney General William P. Barr, Remarks as Prepared for Delivery at the US SEC's Criminal Coordination Conference (3 October 2019), <https://www.justice.gov/opa/speech/us-attorney-general-william-p-barr-delivers-remarks-us-securities-and-exchange-commission>.

144 See, e.g., Letter from Robert Zink, Chief, Fraud Section, US DOJ, to Mark Schamel et al., Womble Bond Dickinson LLP (5 August 2020), <https://www.justice.gov/criminal-fraud/file/1301826/download>. Letter from Matthew Kruger [sic], US Attorney, E.D. Wis. and Robert Zink, Chief, Fraud Section, US DOJ, to David W Simon et al., Foley & Lardner LLP (19 September 2019), <https://www.justice.gov/criminal-fraud/file/1205341/download>. Letter from Sandra Moser, Acting Chief, Fraud Section, US DOJ, to Caz Hashemi, Wilson Sonsini Goodrich & Rosati, and Rohan Virginkar, Foley & Lardner LLP (20 December 2018) [hereinafter Letter from Sandra Moser to Caz Hashemi], <https://www.justice.gov/criminal-fraud/file/1122966/download>. Letter from Craig Carpentino [sic], US Attorney, Dist. of N.J., and Sandra Moser, Acting Chief, Fraud Section, Criminal Division, US DOJ, to Peter Spivack, Hogan Lovells (23 April 2018), <https://www.justice.gov/criminal-fraud/file/1055401/download>.

145 Letter from Daniel S Kahn, Deputy Chief, US DOJ, to Matthew Reinhard, Miller & Chevalier Chartered (20 August 2018), <https://www.justice.gov/criminal-fraud/page/file/1088621/download> (noting that one reason for declination was 'the fact that [Guralp Systems Limited], a U.K. company with its principal place of business in the U.K., is the subject of an ongoing parallel investigation by the U.K.'s Serious Fraud Office for violations of law relating to the same conduct and has committed to accepting responsibility for that conduct with the SFO'). The final declination involved a Barbados-based company that earned less than US\$100,000 in illicit profits from the bribery scheme and voluntarily self-disclosed the conduct. Following the declination, US DOJ charged the company's former chief executive officer and senior vice president.

investigative, cooperative or remedial measures. Even when the US DOJ provides a formal declination, however, it may still require a company to disgorge ill-gotten profits.¹⁴⁶

Notwithstanding the Anti-Piling On Policy, the potential for overlapping enforcement remains. The US Commodity Futures Trading Commission (CFTC) recently entered the foreign-corruption space, despite its stated intention to avoid 'pil[ing] onto other existing investigations'.¹⁴⁷ In March 2019, the CFTC issued an Enforcement Advisory regarding 'self-reporting and cooperation for violations of the Commodity Exchange Act (CEA) involving foreign corrupt practices' and indicated that the agency would pursue foreign corruption that affected commodities and derivatives markets.¹⁴⁸ In December 2020, the CFTC brought its first enforcement action related to foreign corruption.¹⁴⁹ Three other companies have also disclosed ongoing investigations.¹⁵⁰

Operation Car Wash resulted in substantial and at times overlapping corporate fines and penalties imposed by US, Latin American and other law enforcement and regulatory entities, raising questions about the benefits of the policy when applied in practice. Because Latin American authorities do not have policy similar to the Anti-Piling On Policy, companies that resolve their potential liability in

146 See Letter from Craig Carpenito, US Attorney, District of N.J., and Robert Zink, Acting Chief, Fraud Section, Criminal Division, US DOJ, to Karl H Buch and Grayson D Stratton, DLA Piper LLP, and Kathryn H Ruemmler and Douglas N Greenburg, Latham & Watkins LLP (13 February 2019), <https://www.justice.gov/criminal-fraud/file/1132666/download>. Letter from Sandra Moser to Caz Hashemi (footnote 103, above).

147 CFTC Director of Enforcement James M McDonald, Remarks as Prepared for the American Bar Association's National Institute on White Collar Crime (6 March 2019), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamcdonald2>.

148 Press release, CFTC, 'CFTC Division of Enforcement Issues Advisory on Violations of the Commodity Exchange Act Involving Foreign Corrupt Practices' (6 March 2019), <https://www.cftc.gov/PressRoom/PressReleases/7884-19>.

149 Press release, CFTC, 'CFTC Orders Vitol Inc. to Pay \$95.7 Million for Corruption-Based Fraud and Attempted Manipulation' (3 December 2020), <https://www.cftc.gov/PressRoom/PressReleases/8326-20>.

150 See Tokar, Dylan, 'Derivatives Regulator Uses Dodd-Frank Rule to Target Foreign Bribery', *The Wall Street Journal* (22 December 2020), <https://www.wsj.com/articles/derivatives-regulator-uses-dodd-frank-rule-to-target-foreign-bribery-11608633001>. Kagubare, Ines, 'CFTC investigates another commodity trader in PetroEcuador scheme' (30 September 2021), <https://globalinvestigationsreview.com/just-anti-corruption/bribery/cftc-investigates-another-commodity-trader-in-petroecuador-scheme>.

the US without resolving their exposure throughout Latin America may find themselves subject to crippling additional fines and penalties for largely similar or related conduct.¹⁵¹

Global coordination

During the past several years, there has also been an increase in global anti-corruption enforcement and coordination, particularly with respect to investigations involving Latin America.¹⁵² In 2017 alone, the US DOJ reportedly received cooperation from approximately 20 countries in cases brought under the FCPA.¹⁵³ Similarly, the US SEC acknowledged that, in 2017 and 2018, it had received assistance from more than 25 jurisdictions in FCPA cases.¹⁵⁴ Since 2014, Brazil has assisted in at least 18 US DOJ or US SEC investigations that resulted in corporate resolutions. As then-Assistant Attorney General for the US DOJ's Criminal Division Leslie Caldwell stated: '[W]e increasingly find ourselves shoulder-to-shoulder with law enforcement and regulatory authorities in other countries. Every day, more countries join in the battle against transnational

151 Increasingly, Brazil has begun to coordinate penalties among internal regulators, which may signal a willingness to adopt an anti-piling policy. See, e.g., Federative Republic of Brazil, "Acordo de Cooperação Técnica que Entre si Celebram o Ministério Público Federal, a Controladoria-Geral da União (CGU), a Advocacia Geral da União (AGU), o Ministério da Justiça e Segurança Pública (MJSP) e o Tribunal de Contas da União (TCU) em Matéria de Combate à Corrupção no Brasil, Especialmente em Relação aos Acordos de Leniência da Lei No. 12.846, de 2013" [Technical Cooperation Agreement Among the Federal Public Prosecutor's Office, Comptroller-General's Office (CGU), Attorney General's Office (AGU), Ministry of Justice and Public Security (MJSP), and Federal Court of Accounts (TCU) Regarding Anti-Corruption in Brazil, Particularly Leniency Agreements Under Law No. 12.846 of 2013] (6 August 2020), <http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/Acordo06agosto.pdf>.

152 Allen II, Warren T; Bosworth, B Michelle, 'Multi-Jurisdictional Anti-Corruption Investigation and Enforcement Trends and Developments' in *The Review of Securities & Commodities Regulation*, Vol. 51, No. 17 (2018).

153 Kahn, Daniel, 'Responding to the Upward Trend of Multijurisdictional Cases: Problems and Solutions', 66 DOJ J. Fed. Law & Prac. 125, 126 (2018).

154 Peikin, Steven, Remarks at the IOSCO/PIFS-Harvard Law School Global Certificate Program for Regulators of Securities Markets, 'The Salutary Effects of International Cooperation on SEC Enforcement' (3 December 2018), <https://www.sec.gov/news/speech/speech-peikin-120318>.

bribery'.¹⁵⁵ In some instances, the US DOJ has deferred to foreign authorities' investigations and prosecutions, or credited companies the fines paid to foreign authorities for related conduct.¹⁵⁶

Recent resolutions of corruption investigations involving conduct in Latin America reflect this increased cooperation.

On 28 January 2020, Airbus SE agreed to pay combined penalties of more than US\$3.9 billion – to date, the largest single FCPA resolution – to resolve charges with the United States, France and the United Kingdom arising out of a scheme to use third-party business partners to bribe government officials and non-government airline executives.¹⁵⁷ The investigations spanned conduct in more than a dozen countries, including Brazil, Colombia and Mexico. Notably, the UK Serious Fraud Office (SFO) and the French National Financial Prosecutor's Office (PNF) entered into a joint investigation team agreement to facilitate their investigations, with each office focusing on conduct in different countries.¹⁵⁸ Given that Airbus is not a US issuer or domestic concern and that there was only limited

155 Assistant Attorney General Leslie R. Caldwell Speaks at the American Conference Institute's 31st International Conference on the Foreign Corrupt Practices Act (19 November 2014), <https://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-american-conference-institute-s-31st>.

156 See, e.g., Press release, US DOJ, 'Rolls-Royce plc Agrees to Pay \$170 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act Case' (17 January 2017) [hereinafter US DOJ Press Release, 17 January 2017], <https://www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act>. Press release, US DOJ, 'Keppel Offshore & Marine Ltd and U.S. Based Subsidiary Agree to Pay \$422 Million in Global Penalties to Resolve Foreign Bribery Case' (22 December 2017) [hereinafter US DOJ Press release, 22 December 2017], <https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties>.

157 Press release, US DOJ, 'Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case' (31 January 2020) [hereinafter US DOJ Press release, 31 January 2020], <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>.

158 Statement of Facts Prepared Pursuant to Paragraph 5(1) of Schedule 17 to the Crime and Courts Act 2013, *Regina v. Airbus SE* (filed 31 January 2020), www.tisrilanka.org/wp-content/uploads/2020/01/R-v-Airbus-Statement-of-Facts.pdf ('The PNF focused its investigations more particularly on Airbus and its divisions' conduct in the following countries: United Arab Emirates, China, South Korea, Nepal, India, Taiwan, Russia, Saudi Arabia, Vietnam, Japan, Turkey, Mexico, Thailand, Brazil, and Kuwait. The SFO focused its investigations on Airbus and its divisions' conduct in the following countries: South Korea, Indonesia, Sri Lanka, Malaysia, Taiwan, Ghana, Colombia and Mexico. Within this scope, the PNF and SFO selected a representative sample of the markets and concerns involved.').

territorial contact over the corrupt conduct, the US authorities gave Airbus credit for any payments to the SFO and the PNF.¹⁵⁹ To date, Latin American authorities have not publicly announced investigations or charges against Airbus.

In January 2017, Rolls-Royce reached a related leniency agreement with Brazil's Federal Public Prosecutor's Office (MPF), under which it would pay a US\$25.5 million penalty for corrupt payments made to secure Petrobras contracts.¹⁶⁰ In reaching the agreement, the MPF emphasised the quick response by Rolls-Royce and the importance of the company's continuous cooperation with Brazilian regulators; Rolls-Royce made itself available to the regulators throughout the investigative process and, in early 2015, provided Brazilian authorities with the results of its internal investigation into the alleged payments.¹⁶¹ This was part of a US\$800 million global resolution involving the UK Serious Fraud Office and US DOJ, in addition to the MPF.¹⁶²

In December 2020, Vitol Inc reached a Deferred Prosecution Agreement with the US DOJ in which the Department credited Vitol with US\$45 million it agreed to pay to Brazil's MPF to resolve an investigation into bribes paid to win oil contracts with Petrobras.¹⁶³

159 Deferred Prosecution Agreement Paragraph 4, *United States v. Airbus SE*, No. 1:20-cr-00021-TFH (D.D.C. 28 January 2020), <https://www.justice.gov/criminal-fraud/file/1242051/download> (noting that Airbus "is neither a U.S. issuer nor a domestic concern, and the territorial jurisdiction over the corrupt conduct is limited; in addition . . . France's and the United Kingdom's interests over the Company's corruption-related conduct, and jurisdictional bases for a resolution, are significantly stronger, and thus the [DOJ has] deferred to France and the United Kingdom to vindicate their respective interests as those countries deem appropriate, and the [DOJ has] taken into account these countries' determination of the appropriate resolution into all aspects of the U.S. resolution[.]").

160 See e.g., Nunes, Samuel; et al., 'Rolls-Royce pagou US\$ 9,32 milhões em propina para fechar contrato', *G1 Globo* (17 January 2017) [hereinafter *Rolls-Royce pagou*], <http://g1.globo.com/pr/parana/noticia/2017/01/mpf-confirma-acordo-de-leniencia-com-rolls-royce-na-lava-jato.html>. Epstein, Evan, 'Top 10 FCPA-Related Cases in Latin America', *Medium* (29 May 2018), <https://medium.com/@evan.epstein/top-10-fcpa-related-cases-in-latin-america-ef0129747cf1>.

161 *Rolls-Royce pagou*, 17 January 2017 (footnote 161, above).

162 US DOJ Press Release, 17 January 2017 (footnote 157, above).

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

In June 2021, Amec Foster Wheeler Limited reached a Deferred Prosecution Agreement with the US DOJ and entered into a cease-and-desist order with the US SEC while also settling with the MPF as a result of paying bribes to Petrobras.¹⁶⁴

Misconduct initially identified during *Operation Car Wash* in particular has led to coordination between US and Latin American regulators in a number of large corporate settlements. In December 2017, Keppel Offshore & Marine Ltd (Keppel), a shipyard operator in Singapore, and its US-based subsidiary reached a global settlement with authorities in the United States, Brazil and Singapore in connection with payments to public officials in Brazil.¹⁶⁵ Similarly, in June 2019, US and Brazilian authorities reached corporate resolutions with TechnipFMC plc (Technip) arising out of allegations that Technip paid bribes to win contracts with Petrobras.¹⁶⁶ Technip agreed to pay a combined criminal fine of more than US\$296 million, with the United States receiving US\$81 million and Brazil US\$214 million.¹⁶⁷

Coordination between countries has recently moved beyond coordinated enforcement and into legislative alignment. Chapter 27 of the United States–Mexico–Canada Agreement (USMCA), which went into effect on 1 July 2020,¹⁶⁸ requires not only cross-border cooperation between the countries' respective enforcement authorities but for each country to 'adopt or maintain legislative and other measures' that criminalise bribery, solicitation or acceptance of a bribe and embezzlement or misappropriation of public funds, among other measures.¹⁶⁹

164 Press Release, US DOJ, 'Amec Foster Wheeler Energy Limited Agrees to Pay Over \$18 Million to Resolve Charges Related to Bribery Scheme in Brazil' (25 June 2021), <https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery>. Press Release, US SEC, 'SEC Charges Amec Foster Wheeler Limited With FCPA Violations Related To Brazilian Bribery Scheme' (25 June 2021), <https://www.sec.gov/news/press-release/2021-112>.

165 US DOJ Press release, 22 December 2017 (footnote 157, above).

166 Press release, Controladoria-Geral da União, 'CGU, AGU, MPF e DOJ firmam primeiro acordo de leniência global no âmbito da Lava Jato' (25 June 2019), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2019/06/cgu-agu-mpf-e-doj-firmam-primeiro-acordo-de-leniencia-global-no-ambito-da-lava-jato>.

167 Deferred Prosecution Agreement Paragraph 7, *United States v. TechnipFMC plc*, No. 19-CR-278 (E.D.N.Y. 25 June 2019), <https://www.justice.gov/opa/press-release/file/1177316/download>.

168 Office of the US Trade Representative, US Mex. Can. Agreement, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>.

169 Office of the US Trade Representative, 'U.S.-Mex.-Can. Agreement, Chapter 27, Article 27.3-1: Measures to Combat Corruption', <https://ustr.gov/sites/default/files/files/agreements/>

Each country is generally bound to enforce its anti-corruption laws but retains discretion with respect to the particular enforcement, and parties do not have a real recourse if they believe another party has failed to enforce its anti-corruption laws in compliance with the USMCA.¹⁷⁰

Similarly, in November 2021, the Organisation for Economic Co-operation and Development (OECD) Council adopted the 2021 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.¹⁷¹ With this Recommendation, the 44 countries party to the OECD Anti-Bribery Convention agree to new measures geared towards 'strengthening enforcement of foreign bribery laws, addressing the demand side of foreign bribery, enhancing international co-operation, introducing principles on the use of non-trial resolutions in foreign bribery cases, incentivising anti-corruption compliance by companies, and providing comprehensive and effective protection for reporting persons.'¹⁷²

Individuals

US enforcement

The US DOJ and the US SEC continue to prioritise individual accountability in enforcing the FCPA for conduct in Latin America and elsewhere. US DOJ policy emphasises the importance of pursuing individual criminal liability as the strongest deterrent against future corporate wrongdoing and requires companies to identify individuals who were 'substantially involved in or responsible for the criminal conduct' to earn cooperation credit.¹⁷³ In October 2021, Deputy Attorney General Lisa Monaco re-emphasised this commitment, noting that,

FTA/USMCA/Text/27_Anticorruption.pdf.

170 id. at Articles 27.6.1-2 and 27.8.1-3.

171 OECD, 2021 OECD Anti-Bribery Recommendation (26 November 2021) [hereinafter 2021 OECD Anti-Bribery Recommendation], <https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm>.

172 id.

173 Rosenstein, Rod J, Deputy Attorney General, Remarks as Prepared for the American Conference Institute's 35th International Conference on the Foreign Corrupt Practices Act (29 November 2018), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-0>. see Justice Manual, 9-28.210 – Focus on Individual Wrongdoers, <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.210>.

'Attorney General Garland has made clear it is unambiguously this department's first priority in corporate criminal matters to prosecute the individuals who commit and profit from corporate malfeasance'.¹⁷⁴

This prioritisation has led to an increase in FCPA charges against individuals. In December 2019, then-Assistant Attorney General Brian Benczkowski announced: 'So far in 2019, the Criminal Division's FCPA Unit has publicly announced more charges against individuals [34] than in any other year in history. It has also publicly announced more guilty pleas by individuals [30] than ever before'.¹⁷⁵ Similarly, 'in 2020 the [US] DOJ's Fraud Section publicly charged 29 individuals in connection with FCPA matters'.¹⁷⁶ Some, however, have taken issue with the US DOJ's counting.¹⁷⁷

The US DOJ and the US SEC also continue to rely on cooperating companies to assist in individual prosecutions. Companies' assistance in identifying individuals and supporting the US DOJ's prosecution of these individuals is a factor that the US DOJ has cited in declining to bring corporate criminal charges and is key for companies obtaining cooperation credit.¹⁷⁸ In October 2021, Deputy Attorney General Monaco announced a more stringent requirement that companies must 'identify all individuals involved in the misconduct' and provide 'all non-privileged information about individual wrongdoing' to be eligible for any cooperation credit.¹⁷⁹ Under the prior administration's policy, qualifying

174 Monaco, Lisa O, Deputy Attorney General, Remarks as Prepared for the American Bar Association's National Institute on White Collar Crime (28 October 2021) [hereinafter Remarks by Lisa Monaco, 28 October 2021], <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute>.

175 Benczkowski, Brian A, Assistant Attorney General, Remarks as Prepared for the American Conference Institute's 36th International Conference on the Foreign Corrupt Practices Act (4 December 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-american-conference>.

176 Remarks by Brian Rabbitt, 3 December 2020.

177 Cassin, Richard L, 'Why FCPA scoreboards can be so different', FCPA Blog (13 December 2019), <https://fcpublog.com/2019/12/31/why-fcpa-scoreboards-can-be-so-different/> (noting that Benczkowski's numbers include all defendants in cases where any defendant is charged with an FCPA violation and defendants who were 're-indicted' following initial indictments in prior years).

178 See, e.g., Letter from Richard P Donoghue, US Attorney, E.D.N.Y. and Sandra L Moser, Acting Chief, Fraud Section, Criminal Division, US DOJ, to Adam B Siegel, Freshfields Bruckhaus Deringer US LLP (23 August 2018), <https://www.justice.gov/criminal-fraud/page/file/1089626/download> ('[T]he Department has decided to close its investigation of this matter based on a number of factors, including . . . the fact that the Department has been able to identify and charge the culpable individuals.').

179 Remarks by Lisa Monaco, 28 October 2021 (footnote 175, above).

companies could get cooperation credit for identifying only individuals that were 'substantially involved' in or responsible for potential criminal misconduct.¹⁸⁰ Deputy Attorney General Monaco explained that the prior policy was rescinded because it was vague and 'afford[ed] companies too much discretion in deciding who should and should not be disclosed to the government'.¹⁸¹

Of 66 companies that reached large¹⁸² FCPA-related resolutions with the US SEC or the US DOJ (or both) between 2015 and February 2021, the US government pursued at least 45 individuals related to the conduct of at least 21 companies. The vast majority of the individuals were employed by the settling company or its subsidiaries, held senior positions or were directly involved in authorising, causing or concealing bribe payments. Those individuals prosecuted by the US DOJ who were not directly employed by the settling company were generally third-party consultants who paid bribes on behalf of the settling company.¹⁸³

In a notable departure from the typical situation in which a corporate entity cooperates, achieving a more favourable resolution for the entity and facilitating US DOJ enforcement actions against culpable individuals, the US DOJ has brought more than 30 individual prosecutions in connection with two Latin American SOEs in the energy sector, notwithstanding that neither entity nor any other company had yet reached a resolution relating to those schemes. For example, the US DOJ has aggressively prosecuted individuals related to PetroEcuador. As of 23 January 2020, the US DOJ had announced 13 public charges and guilty pleas against individuals in the US DOJ's investigation into bribery and money laundering involving PetroEcuador.¹⁸⁴ On 28 January 2021, one individual was sentenced to 35 months in prison for his role in the scheme.¹⁸⁵

180 *id.*

181 *id.*

182 Combined monetary payments of US\$9,875,000 or greater.

183 See, e.g., Rolls-Royce plc (Petros Contoguris, Andreas Kohler).

184 See, e.g., Press release, US DOJ, 'Miami-Based Businessman Pleads Guilty to FCPA and Money Laundering Violations in Scheme Involving PetroEcuador Officials' (23 January 2020), <https://www.justice.gov/opa/pr/miami-based-businessman-pleads-guilty-fcpa-and-money-laundering-violations-scheme-involving>. A federal grand jury in the Eastern District of New York has also announced an indictment against an individual alleged to have 'participated in a conspiracy to pay and conceal bribes to then-Ecuadorian officials, including at [Petroecuador]': Press release, US DOJ, 'Oil Trader Indicted in International Bribery and Money Laundering Conspiracy Involving Corrupt Payments to Ecuadorian Officials' (22 September 2020), <https://www.justice.gov/opa/pr/oil-trader-indicted-international-bribery-and-money-laundering-conspiracy-involving-corrupt>.

185 Press release, US DOJ, 'Businessman Sentenced for Foreign Bribery and Money Laundering Scheme Involving PetroEcuador Officials' (28 January 2021), <https://www.justice.gov/>

Local enforcement in Latin America

While US agencies have pursued bribe payers and facilitators, as well as employees of state-owned enterprises, Latin American authorities have aggressively prosecuted politicians and high-level government officials, many of whom received bribe payments uncovered in *Operation Car Wash*. In efforts to ensure accountability of government officials, prosecutors have sought to hold former senior politicians in pretrial detention, try them in absentia or imprison them after their conviction is upheld by an appellate court. The latter practice, however, was recently rejected in Brazil in 2019 – where it has had wide implications for the many politicians under investigation – when former president Luiz Inácio Lula da Silva was released from prison on the basis of a Brazilian Supreme Court decision that defendants cannot be imprisoned until they fully exhaust their appeals, including beyond the appellate court level, which can take years.¹⁸⁶

Still, aggressive prosecution of high-level officials continues across Latin America. In Peru, for example, every president elected from 1985 to November 2020 ‘with the exception of one interim leader who served for just eight months – has either been impeached, imprisoned or sought in criminal investigations’.¹⁸⁷ On 16 July 2019, former president Alejandro Toledo was arrested in California, a year after a formal extradition request was made by Peru, where he faces corruption charges.¹⁸⁸ During his arrest, Toledo was found to be in possession of a suitcase that contained US\$40,000 in cash; he was deemed a flight

opa/pr/businessman-sentenced-foreign-bribery-and-money-laundering-scheme-involving-petroecuador.

186 See Federal Supreme Court, Brazil (7 November 2019), <http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=464261&ori>. Boadle, Anthony, ‘Top Brazil court ends early prison rule in decision that could free Lula’, (7 November 2019), <https://www.reuters.com/article/us-brazil-corruption-court/top-brazil-court-ends-early-prison-rule-in-decision-that-could-free-lula-idUSKBN1X1020>.

187 Quigley, John, ‘Impeached, Jailed, Wanted: President Is a Dangerous Job in Peru’ (11 November 2020), <https://www.bloomberg.com/news/articles/2020-11-11/impeached-jailed-wanted-president-is-a-dangerous-job-in-peru>.

188 See Burnson, Robert, ‘Ex-Peru President Charged With Corruption Wins Bail in U.S.’, *Bloomberg* (updated 11 October 2019) [hereinafter Burnson], <https://www.bloomberg.com/news/articles/2019-10-10/ex-peru-president-held-in-u-s-custody-to-be-released-on-bail>. see also Sage, Alexandria, ‘Peru ex-president denied bail in U.S., wife dragged from court after outburst’, *Reuters* (12 September 2019), <https://www.reuters.com/article/us-peru-corruption-toledo/peru-ex-president-denied-bail-in-us-wife-dragged-from-court-after-outburst-idUSKCN1VX2P4>.

risk by US courts and ultimately denied bail.¹⁸⁹ Toledo was said to have taken a US\$20 million bribe during his term as president.¹⁹⁰ In March 2020, a judge ordered Toledo's release on home confinement owing to covid-19 concerns on the condition that he pay US\$500,000 cash bail and that his wife surrender her passports.¹⁹¹ Toledo continues to fight his extradition to Peru.¹⁹² In September 2021, a California judge decided that there was sufficient evidence and probable cause against Toledo.¹⁹³ The final decision on whether to extradite Toledo now lies with the US State Department. Former president Pedro Pablo Kuczynski is in pretrial detention facing corruption charges related to allegations uncovered by *Operation Car Wash*.¹⁹⁴ Former president Alberto Fujimori is serving a 25-year sentence for human rights violations and corruption.¹⁹⁵ Fujimori's daughter, Keiko Fujimori, who is one of the leaders of the Peruvian opposition, was detained and released twice, most recently in May 2020, in connection with allegations of money laundering and obstruction of justice.¹⁹⁶ Keiko Fujimori has publicly said that she would pardon her father if she is elected president, but she narrowly lost the

189 See Viguria, Carlos, 'Justicia de EE.UU. determina que Alejandro Toledo continúe en prisión', *Perú21* (14 November 2019), <https://peru21.pe/politica/justicia-de-eeuu-determina-que-alejandro-toledo-continue-en-prision-noticia>. Burnson (footnote 189, above).

190 'U.S. judge orders release of Peru ex-president on bail due to coronavirus outbreak', *Reuters* (19 March 2020), <https://www.reuters.com/article/us-peru-corruption-toledo-idUSKBN21703W>.

191 See *id.*

192 Iovino, Nicholas, 'Judge Advances Extradition Case Against Ex-Peru President', *Courthouse News Service* (4 September 2020), <https://www.courthousenews.com/judge-advances-extradition-case-against-ex-peru-president>.

193 Rochabrun, Marcelo, 'U.S. judge clears way for extradition of former Peruvian President Toledo', *Reuters* (28 September 2021), <https://www.reuters.com/world/americas/us-judge-clears-way-extradition-former-peruvian-president-toledo-2021-09-28>.

194 'Aprueban 36 meses de prisión preventiva para Pedro Pablo Kuczynski', *CNN Español* (19 April 2019), <https://cnnespanol.cnn.com/2019/04/19/aprueban-36-meses-de-prision-preventiva-para-pedro-pablo-kuczynski>.

195 'Keiko Fujimori: Peru opposition leader walks free from jail', *The Guardian* (29 November 2019), <https://www.theguardian.com/world/2019/nov/30/keiko-fujimori-peru-opposition-leader-walks-free-from-jail>.

196 'Peru's Keiko Fujimori to be freed from prison during graft investigation', *Reuters* (4 April 2020), <https://www.reuters.com/article/us-peru-corruption/perus-keiko-fujimori-to-be-freed-from-prison-during-graft-investigation-idUSKBN22C3YQ>.

presidential election twice, to Kuczynski in 2016 and to Pedro Castillo in 2021.¹⁹⁷ In April 2019, former president Alan García committed suicide when police arrived at his home to place him in pretrial detention for alleged corruption.¹⁹⁸

In Argentina, Cristina Fernández de Kirchner (former president and senator and current vice president) had 11 court cases pending against her, including in connection with allegations of corruption.¹⁹⁹ Some of the charges stemmed from Los Cuadernos (known as the *Notebooks* scandal), an investigation made public in August 2018 that was triggered by the publication of several notebooks written by the driver of a high-ranking public official in Argentina. The notebooks detailed bribes paid to public officials in connection with contracts for public works.²⁰⁰ The scandal has implicated dozens of public officials and business owners. The investigation is now closed and the Federal Cassation Court recently rejected Ms Fernández de Kirchner's challenge of her indictment. She shall, therefore, have to stand trial in the coming months.²⁰¹

197 Aquino, Marco, 'Peru's Keiko Fujimori says would pardon father if elected president', *Reuters* (18 January 2021), <https://www.reuters.com/article/us-peru-politics/perus-keiko-fujimori-says-would-pardon-father-if-elected-president-idUSKBN29N1HT>.

198 'Making sense of the suicide of Alan García, a former president of Peru', *The Economist* (27 April 2019), <https://www.economist.com/the-americas/2019/04/27/making-sense-of-the-suicide-of-alan-garcia-a-former-president-of-peru>.

199 Mur, Robert, "'La condena ya está escrita", afirma Kirchner en su juicio por corrupción', *La Vanguardia* (12 March 2019), <https://www.lavanguardia.com/internacional/20191202/472029885966/cristina-kirchner-juicio-corrupcion-argentina.html>. Alcoba, Natalie, 'Argentina's ex-President Kirchner faces first corruption trial', *Al Jazeera* (21 May 2019), <https://www.aljazeera.com/news/2019/05/argentina-president-christina-kirchner-faces-corruption-trial-190521131408914.html>.

200 Do Rosario, Jorgelina; Gillespie, Patrick, 'Why Kirchner's Comeback Goes Through Argentine Court', *Bloomberg* (12 August 2019), <https://www.bloomberg.com/news/articles/2019-05-30/why-kirchner-s-comeback-goes-through-argentine-court-quicktake>.

201 'Cuadernos' probe: Case proceeds to trial as court rejects CFK's appeal', *Buenos Aires Times* (16 February 2022), <https://www.batimes.com.ar/news/argentina/cuadernos-probe-case-proceeds-to-trial-as-court-rejects-cfks-appeal.phtml>.

In Bolivia, prosecutors issued an arrest warrant for former president Evo Morales, who resigned in October 2019 following a disputed election,²⁰² although the arrest warrant was annulled a year later.²⁰³ In January 2020, the interim government opened a corruption investigation into almost 600 former Morales officials, including the former president.²⁰⁴

In Mexico, the Special Prosecutor's Office for Combating Corruption opened 1,668 investigations between March 2019 and March 2021. Only 2.3 per cent of the complaints it received, though, name a private corporation as an alleged offender.²⁰⁵

The former vice president of Ecuador, Jorge Glas, was sentenced to six years in prison in December 2017 for corruption unearthed by *Operation Car Wash*.²⁰⁶ As of November 2019, 'the Attorney General's Office had indicted twenty-four former government and private-sector officials, including [former president] Correa and Glas, in an investigation of an alleged bribery scheme called the '2012–2016 Bribes', involving the Brazilian Odebrecht company and other firms that allegedly financed political party activities and campaigns during the Correa government in exchange for government contracts'.²⁰⁷ Correa was convicted in April 2020, sentenced to eight years in prison, and banned from serving in politics for 25 years.²⁰⁸

In Panama, several former ministers as well as two sons of former president Ricardo Martinelli are currently on trial in the *Blue Apple* case involving bribery and money laundering charges regarding the use of Panamanian corporations to

202 'Bolivia issues arrest warrant for Evo Morales', *Financial Times* (8 December 2019), <https://www.ft.com/content/aa5ace2e-21e6-11ea-b8a1-584213ee7b2b>.

203 'Juez boliviano anula orden de arresto contra exlíder Morales', *Reuters* (26 October 2020), <https://www.reuters.com/article/justicia-bolivia-morales-idLTAKBN27C02G>.

204 'Bolivia opens probe into 600 former Morales officials', *France24* (8 January 2020), <https://www.france24.com/en/20200108-bolivia-opens-probe-into-600-former-morales-officials>.

205 'Informe Annual de Actividades y Resultados 2021', Fiscalía Especializada en Combate a la Corrupción (11 March 2021), https://sna.org.mx/wp-content/uploads/2021/03/INFORME_ANUAL_2020-2021_FISCAL%C3%8DA_ANTICORRUPCI%C3%93N_2021.pdf.

206 'Ecuador's Vice President Sentenced to 6 Years in Corruption Case' (*Reuters*), *The New York Times* (13 December 2017), <https://www.nytimes.com/2017/12/13/world/americas/ecuadors-vice-president-sentenced-to-6-years-in-corruption-case.html>.

207 '2019 Country Reports on Human Rights Practices: Ecuador', US Department of State, Bureau of Democracy, Human Rights and Labor, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/ecuador>.

208 Cabrera, José María León, 'Ecuador's Former President Convicted on Corruption Charges,' *The New York Times* (7 April 2020), <https://www.nytimes.com/2020/04/07/world/americas/ecuador-correa-corruption-verdict.html?searchResultPosition=1>.

hide bribes to various highly placed government officials of the Martinelli administration.²⁰⁹ In addition, Ricardo Alberto and Luis Enrique Martinelli Linares, the sons of ex-president Ricardo Martinelli, were extradited from Guatemala to the United States on bribery and money laundering charges involving Odebrecht. The Martinelli brothers have both entered guilty pleas and are currently awaiting sentencing in a New York jail.²¹⁰

Industry-specific focuses

Healthcare

In the past five years, the US DOJ and the US SEC have brought a number of enforcement actions in the healthcare space, including with respect to corrupt payments made to Latin American officials. For example, in January 2017, Zimmer Biomet Holdings, Inc (Zimmer Biomet) and its indirect subsidiary, JERDS Luxembourg Holding S rl, resolved investigations by the US DOJ and the US SEC concerning its dealings with a corrupt third-party distributor in Brazil.²¹¹ The company agreed to pay a US\$17.4 million criminal penalty, a civil penalty of US\$6.5 million and approximately US\$6.5 million in disgorgement and prejudgment interest to US authorities, in connection with its admission that it failed to follow the conditions of a 2012 deferred prosecution agreement (DPA) with the US DOJ by continuing to use a third-party distributor in Brazil known to have paid bribes to government officials on the company's behalf. Zimmer Biomet also failed to implement an adequate system of internal controls in Mexico, which resulted in the payment of bribes to Mexican customs officials.²¹²

209 Republica de Panama Organo Judicial, 'Juzgado Tercero Liquidador de Causas Penales Abre Causa Criminal Contra 26 Ciudadanos En El Denominado Caso "Blue Apple"' (16 November 2021), <https://www.organojudicial.gob.pa/noticias/juzgado-tercero-liquidador-de-causas-penales-abre-causa-criminal-contra-26-ciudadanos-en-el-denominado-caso-blue-apple>.

210 Press release, US DOJ, 'Panamanian Intermediary Extradited to the United States Pleads Guilty to International Bribery and Money Laundering Scheme' (14 December 2021), <https://www.justice.gov/opa/pr/panamanian-intermediary-extradited-united-states-pleads-guilty-international-bribery-and>.

211 See Deferred Prosecution Agreement, *United States v. Zimmer Biomet Holdings, Inc.*, No. 12-CR-00080 RBW (D.D.C. 12 January 2017), https://www.millerchevalier.com/sites/default/files/resources/FCPARreview/FCPARreviewSpring2017_Zimmer_DPA.pdf. Order Instituting Cease and Desist Proceedings, In re Biomet, Inc., Exchange Act Release No. 79780 (12 January 2017), <https://www.sec.gov/litigation/admin/2017/34-79780.pdf>.

212 Press release, US DOJ, 'Zimmer Biomet Holdings Inc. Agrees to Pay \$17.4 Million to Resolve Foreign Corrupt Practices Act Charges' (12 January 2017), <https://www.justice.gov/opa/pr/zimmer-biomet-holdings-inc-agrees-pay-174-million-resolve-foreign-corrupt-practices-act>.

Other companies in the medical sector that have settled FCPA investigations with the US DOJ or the US SEC (or both) in the past five years in connection with conduct in Latin America include, for example, Olympus Latin America, Inc. (Olympus),²¹³ Orthofix International NV²¹⁴ and Alere Inc.²¹⁵ In nearly all these investigations, the US DOJ or the US SEC considered the companies' voluntary cooperation, implementation of compliance programmes or remediation when determining the penalty. For example, the US DOJ gave Olympus a 20 per cent penalty reduction because of its cooperation in undertaking an extensive internal investigation, translating a number of foreign language documents and gathering and analysing voluminous evidence.²¹⁶

The government's focus on companies in the life sciences sector continues, including with respect to their Latin American operations. On 22 July 2019, Koninklijke Philips NV (Philips), headquartered in the Netherlands, disclosed that the public prosecution service in Rio de Janeiro and the Brazilian antitrust authority are conducting an investigation into tender irregularities in the medical device industry in Brazil and that Philips is one of the companies involved in the investigation. Philips is also conducting an internal investigation and is cooperating with requests from the Brazilian authorities, the US DOJ and the US SEC.²¹⁷ On 9 December 2020, Brazil's Federal Public Prosecutor's Office (MPF) announced that it had reached a settlement with Philips, under which the company would pay 11.6 million dollars (approximately 60 million reais) and implement additional compliance measures.²¹⁸

213 See generally Deferred Prosecution Agreement, *United States v. Olympus Latin America, Inc.*, No. 16-3525 (MF) (D.N.J. 2016), <https://www.justice.gov/criminal-fraud/file/831256/download>.

214 See Press release, US SEC, 'Medical Device Company Charged With Accounting Failures and FCPA Violations' (18 January 2017), <https://www.sec.gov/news/pressrelease/2017-18.html>.

215 See Order Instituting Cease and Desist Proceedings, *In re Alere Inc.*, Exchange Act Release No. 81,742 (28 September 2017), <https://www.sec.gov/litigation/admin/2017/33-10417.pdf>.

216 See Press release, US DOJ, 'Medical Equipment Company Will Pay \$646 Million for Making Illegal Payments to Doctors and Hospitals in United States and Latin America' (1 March 2016), <https://www.justice.gov/opa/pr/medical-equipment-company-will-pay-646-million-making-illegal-payments-doctors-and-hospitals>.

217 Koninklijke Philips N.V., Report of Foreign Private Issuer Pursuant to Rules 13a-16 and 15d-16 (Form 6-K) (22 July 2019), <https://www.sec.gov/Archives/edgar/data/313216/000031321619000014/phg-20190722.htm>.

218 See Press Release, Brazil MPF, 'MPF firma acordo de leniência com Philips e garante ressarcimento de quase R\$ 60 milhões aos cofres públicos' (9 December 2020), <http://www.mpf.mp.br/rj/sala-de-imprensa/noticias-rj/mpf-firma-acordo-de-leniencia-e->

Similarly, the US SEC announced on 2 July 2020, that it had reached an agreement with Alexion Pharmaceuticals, a company headquartered in Massachusetts, in an action involving, in part, allegations that the company's subsidiaries in Brazil and Colombia 'failed to maintain accurate books and records, including by creating or directing third parties to create inaccurate financial records concerning payments to patient advocacy organizations'.²¹⁹ This settlement was in connection with a subpoena that the company received from the US SEC in 2015, and a request for information from the US DOJ.²²⁰

Additionally, the healthcare industry has been especially susceptible to covid-related corruption in Latin America (as discussed above).²²¹

Aviation

Companies in the aviation industry that do business in Latin America have also been recent targets of anti-corruption enforcement actions, including with respect to corrupt payments made to officials in the region. Airbus's January 2020 settlement with authorities in the United States, France and the United Kingdom is only one notable recent example.²²²

On 25 July 2016, LATAM Airlines Group SA (LATAM) settled charges relating to a scheme orchestrated by its predecessor, LAN Airlines SA, to pay bribes to Argentine union officials via a false consulting contract with a third-party intermediary. LATAM entered into a three-year DPA with the US DOJ, under which it agreed to pay a US\$12.75 million criminal penalty, enhance its compliance programme and retain an independent monitor.²²³ The US DOJ considered the company's cooperation in the investigation but also took into account that the company did not voluntarily disclose the violations or remediate

garante-o-ressarcimento-de-quase-r-60-milhoes-aos-cofres-publicos. Thomas, James, 'Philips resolves Brazilian medical device bribery probe,' *Global Investigations Review* (10 December 2020), <https://globalinvestigationsreview.com/news-and-features/investigators-guides/brazil/article/philips-resolves-brazilian-medical-device-bribery-probe>.

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

220 Alexion Pharmaceuticals, Inc. (Form 10-K), at 54 and 55 (4 February 2020), <https://ir.alexion.com/static-files/c1e8aa68-bbb7-4745-9a73-6efce71e29be>.

221 See, e.g., Goodman, Joshua, 'Spread of Coronavirus fuels corruption in Latin America,' AP News (27 May 2020), <https://apnews.com/article/a240ff413fb23220aff30c6d6e6aba4c>.

222 See US DOJ Press release, 31 January 2020 (footnote 158, above).

223 See Press release, US DOJ, 'LATAM Airlines Group Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$12.75 Million Criminal Penalty' (25 July 2016), <https://www.justice.gov/opa/pr/latam-airlines-group-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-1275>.

adequately. As a result, the US DOJ imposed a penalty within the US Sentencing Guidelines range rather than providing a discount off the bottom of the range.²²⁴ LATAM also agreed to pay approximately US\$9.4 million to the US SEC in disgorgement and prejudgment interest.²²⁵ The US SEC considered remedial acts by LATAM and its predecessor LAN, including the implementation of a basic compliance programme, the adoption of a new code of conduct, the hiring of a compliance manager and annual training of employees on anti-corruption.²²⁶ Three other companies in the aviation industry have resolved FCPA cases with the US DOJ or the US SEC (or both) in recent years in connection with conduct in Latin America.²²⁷

Conclusion

As recent events make clear, many regulators throughout Latin America are aggressively investigating allegations of corruption and prosecuting wrongdoers. Further, regulators in the United States and Europe have been working together and with Latin American regulators to enforce their own anti-corruption laws in connection with allegations of legal violations in the region. Companies doing business in Latin America should ensure that they have robust anti-corruption policies and safeguards in place, and be prepared to coordinate with multiple regulators from various jurisdictions, and consider carefully the costs and benefits of proactive voluntary cooperation.

224 *id.*

225 Press release, US SEC, 'LAN Airlines Settles FCPA Charges' (25 July 2016), <https://www.sec.gov/news/pressrelease/2016-151.html>.

226 See Order Instituting Cease and Desist Proceedings, *In re LAN Airlines S.A.* (25 July 2016), <https://www.sec.gov/litigation/admin/2016/34-78402.pdf>.

227 See, e.g., Deferred Prosecution Agreement, *United States v. Dallas Airmotive, Inc.*, No. 14-CR-483 (N.D. Tex., 10 December 2014), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2014/12/30/dai-dpa-final.pdf>. Deferred Prosecution Agreement, *United States v. Rolls-Royce plc*, No. 2:16-cr-347 (S.D. Ohio, 20 December 2016), <https://www.justice.gov/criminal-fraud/file/929126/download>.

APPENDIX 1

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This guide delivers specialist insight to our readers – general counsel, compliance officers, government agencies and private practitioners – who must navigate the region's complex, fast-changing framework of rules and regulations.

In preparing this guide, we have been working with practitioners from a variety of disciplines and geographies, who have contributed a wealth of knowledge and experience. We are grateful for their cooperation and insight.

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