COVINGTON

Trends and Developments in Anti-Corruption Enforcement
反腐败执法的趋势和发展

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Anti-Corruption 反腐败

Our message this year is simple: FCPA enforcement is here to stay. Despite pre-election statements to the contrary, various senior officials in the U.S. Department of Justice ("DOJ") and U.S. Securities and Exchange Commission ("SEC") have, over the past year, consistently reaffirmed DOJ's and the SEC's commitment to FCPA enforcement. By the numbers, DOJ and the SEC collected a total of $1.13 billion in 2017 from 13 corporate defendants, including through their share of several high-value, multi-jurisdictional enforcement actions. DOJ also initiated FCPA prosecutions against 20 individuals in 2017, representing 70 percent of the Department's total enforcement actions, and the SEC commenced enforcement actions against three individuals. Leaving the recoveries aside, staffing of the dedicated FCPA enforcement units in DOJ and the SEC continues to be strong, even if perhaps no longer growing or even slightly contracting from historical highs in recent years. Robust FCPA enforcement depends on political will, DOJ and SEC prioritization, and adequate resources. All three continue to be present and, when considered alongside the continued rise in multi-jurisdictional enforcement efforts, it seems fairly plain that anti-corruption enforcement has weathered recent tectonic political changes in Washington.

今年我们对反腐败执法趋势和发展的预测很简单：FCPA 执法仍会继续。尽管存在一些大选前的相反声明，美国司法部（下称"司法部"）与美国证券交易委员会（下称"证交会"）的各位高级官员在过去一年里多次重新确认了司法部和证交会对于 FCPA 执法的承诺。根据统计，司法部和证交会在 2017 年向 13 个公司被告人收取了总计 11.3 亿美元的罚金，包括通过参与几项高价值、跨辖区执法行动所收取的份额。司法部在 2017 年还对 20 名个人发起了 FCPA 诉讼，占司法部执法行动总数的 70%，证交会对三名个人启动了执法行动。撇开追偿不谈，即使也许人数不再增长，或甚至近年里相比历史高位有所回落，司法部和证交会的 FCPA 执法专门部门的人力资源仍然很强。积极的 FCPA 执法取决于政治意愿、司法部和证交会的重点投入以及充足的资源。这三个条件仍然存在，另外考虑到跨辖区执法力度的持续增强，这些表明反腐败执法已经受了近期华盛顿政局变动的影响。

At the same time, a growing number of countries outside the U.S. have become active in bringing their own anti-corruption investigations and enforcement actions, in part due to the implementation of new laws providing enforcement authorities with a range of enforcement

tools—such as corporate settlement mechanisms—similar to those that have been used in the U.S. for many years.

同时，美国以外越来越多的国家开始积极开展本国的反腐败调查和执法行动，其部分原因是其他国家新法律的实施赋予了该国执法部门拥有与美国国内已使用多年的执法工具类似的各种执法工具（如公司和解机制）。

Part I: U.S. Trends 第一部分：美国趋势

Last year, we observed that FCPA enforcement was at a crossroads, given that President Trump and certain key individuals selected for leadership positions at DOJ and the SEC had expressed some skepticism about the FCPA or white collar enforcement priorities more generally. In certain respects, the year may have marked a retreat from a high-water mark in FCPA enforcement, embodied most notably in the "broken windows" approach to enforcement championed by former SEC Chair Mary Jo White. But 2017 also showed that FCPA enforcement withstood the transition in administrations and, under the direction of new leadership at DOJ and the SEC, remains a key enforcement priority. In April, for instance, Attorney General Sessions praised the FCPA's ability "to create an even playing field for law-abiding companies" and pledged to "continue to strongly enforce the FCPA and other anti-corruption laws." Likewise, in November, the SEC's Co-Director of Enforcement, Steven Peikin, reaffirmed the SEC's commitment to robust FCPA enforcement. And in December, the Trump administration included anti-corruption enforcement as part of its National Security Strategy stating that anti-corruption measures and enforcement actions are "important parts of [the] broader strategies to deter, coerce, and constrain adversaries." Of course, actions speak louder than words. As discussed below, last year's developments at DOJ appeared to send relatively clear signals about the Department's priorities, whereas the SEC was more opaque.

去年，我们曾表示，FCPA 执法处于十字路口，因为特朗普总统和某些在司法部和证交会当选领导职务的关键人员在比较总体的层面上对于 FCPA 或白领执法重点任务表示了一些怀疑。从某些方面来说，去年可以说是 FCPA 执法热度回落的一年，主要体现在前证交会主席 Mary Jo White 提出的"破窗"执法方法。但在 2017 年，FCPA 执法也经受了政府过渡的考验，在司法部和证交会新领导集体的指导下，仍然是重要的执法领域。例如，在四月，司法部长 Sessions 称赞了 FCPA"为守法公司创造公平竞争环境"的能力，并誓言"继续大力执行 FCPA 及其他反腐败法律。"同样，在 11 月，证交会执法联席主任 Steven Peikin 再次确认了证交会严格执行 FCPA 的承诺。在 12 月，特朗普政府将反腐败执法列入其国家安全策略，称，反腐败措施和执法行动是"威摄、压制和制约对手的更广泛策略的重要组成部分"。当然，事实胜于雄辩。如下文所述，司法部去年的动态似乎传达了关于司法部工作重点的较明确信号，而证交会的态度则不太明确。

1. **The FCPA Corporate Enforcement Policy further incentivizes companies to voluntarily disclose potential violations, but prosecutorial discretion in key areas means that some uncertainty remains as to how DOJ will approach cases that are self-reported. Despite this uncertainty, it is clear that the effectiveness of a company's compliance program will take on even greater significance under the new policy.**
FCPA 公司执法政策进一步激励公司自愿披露潜在违法行为，但检方在关键领域的裁量权表明，对于司法部会如何处理自行报告的案件仍然存在一些不确定性。尽管有上述不确定性，但可以肯定的是，在新政策下，公司合规制度的有效性将具有更重要的意义。

In November 2017, DOJ announced an FCPA Corporate Enforcement Policy (the "Policy"), which is now incorporated in the United States Attorneys' Manual. As we observed when it was announced, the Policy made two key changes to the Fraud Section's *Foreign Corrupt Practices Act Enforcement Plan and Guidance*, which DOJ introduced, on a pilot basis, in April 2016 (the "Pilot Program").

2017 年 11 月，司法部宣布了一项 FCPA 公司执法政策（下称"政策"），该政策现已被收入《美国检察官手册》。在该政策被宣布时我们曾指出，该政策对欺诈司的《反海外腐败法执法计划和指南》做了两项关键变更，司法部于 2016 年 4 月以试点方式出台了这两项变更（"试点计划"）。

- *First*, it establishes, in the absence of "aggravating circumstances," a presumption of a declination for a company that (i) voluntarily discloses misconduct in an FCPA matter; (ii) fully cooperates; (iii) timely and appropriately remediates; and (iv) agrees to disgorge profits resulting from the misconduct and pay restitution.
  首先，在不存在"加重情节"的情况下，其确立推定不起诉适用的条件为公司（i）在反海外腐败法事项中自愿披露不当行为；（ii）全面合作；（iii）及时适当弥补；和（iv）同意上缴违法所得并支付赔偿金。
- *Second*, the Policy commits DOJ to recommending a 50 percent reduction off the low end of the U.S. Sentencing Guidelines (the "Guidelines") fine range in those cases (except cases involving recidivists) in which a company does not qualify for a declination but otherwise voluntarily discloses the conduct, fully cooperates, and remediates. The Policy also makes clear that, in cases where a company qualifies for a 50 percent reduction, DOJ "generally will not require appointment of a monitor" if the company has implemented an effective compliance program at the time of the resolution.
  其次，该政策表明，对于公司不符合不起诉条件但是另行自愿披露相关行为、全面合作并进行补救的案件（不包括涉及累犯的案件），司法部建议将《美国量刑指南》（"指南"）罚金幅度下限下调 50%。公司执法政策还明确，如果公司符合减少 50%罚金的条件，且公司已经在解决案件之时实施有效的合规计划，则司法部"通常不会要求指定监管员"。

The Policy appears to reflect DOJ's view that the recent uptick in voluntary disclosures—22 in the first year of the Pilot Program according to a recent speech by Deputy Attorney General Rod Rosenstein, as compared to 13 the year before—was driven by the increased certainty of favorable resolutions that companies received under the Pilot Program. The Policy does make predicting the benefits of self-reporting in FCPA cases somewhat more certain, which could lead more companies to self-report. But the additional clarity and predictability that the Policy is intended to achieve is offset in part by the fact that prosecutors retain considerable discretion to confer, or not, the potential benefits of self-disclosure. This discretion is embodied in the Policy's "aggravating circumstances" exception, which allows prosecutors to depart from the presumption of a declination and resolve matters through a non-prosecution agreement, deferred prosecution agreement ("DPA"), guilty plea, or even indictment. The non-exhaustive list of "aggravating circumstances" includes "involvement by executive management of the company" in the misconduct, a "significant profit to the company" resulting from the misconduct, the "pervasiveness" of the misconduct within the company, and "criminal recidivism." We will be watching to see whether, as we would expect, DOJ applies the "aggravating circumstances" exception sparingly. And as a richer data set of resolutions under the Policy emerges, we

expect that companies may be able to predict with even greater confidence the likely outcome following a voluntary disclosure.

该政策似乎反映了司法部的下列观点：近期自愿披露数的上升（根据代理司法部长 Rod Rosenstein 最近的一次演讲，在试点计划第一年该数字为 22，而之前一年为 13），其背后的驱动因素是企业在试点计划下将更可能获得对其有利的结果。该政策的确使预测 FCPA 案中自行披露的益处在某种程度上变得更容易，这会鼓励更多公司进行自行披露。但该政策拟实现的更多透明性和可预测性被以下事实部分所抵消：检察官对于是否授予因自行披露而获得的潜在益处保留了相当大的裁量权。该裁量权体现在该政策的“加重情节”例外中，该例外允许检察官放弃不起诉推定，而通过不起诉协议、暂缓起诉协议、认罪请求甚至是起诉书处理案件。“加重情节”包括但不限于不当行为“牵涉公司的执行管理层”；“公司”因不当行为获得“可观利润”；不当行为“遍布公司”；以及存在“累犯情况”。我们将关注的是，司法部是否会（如我们预期的一样）谨慎地适用“加重情节”例外。由于该政策下出现了更丰富的结案数据集，我们预期，企业将能够更有信心地预测自愿披露后可能的结果。

The Policy also speaks to what DOJ expects with respect to a company's cooperation and remediation, and in two respects differs from earlier guidance:

该政策也从不同于较早指南的两个方面提到司法部对一家公司的合作和弥补的预期：

- *First*, the Policy provides greater guidance on DOJ's use of "de-confliction" requests, i.e., situations in which DOJ asks a company to defer an investigative step—typically, interviewing employees—until after the government has an opportunity to do so. As in the Pilot Program, compliance with de-confliction requests is a requirement of full cooperation in the Policy. Both in public comments and in our interactions with DOJ, we have raised concerns that de-confliction requests can put a company in a challenging position, in which its ability to conduct an investigation and take remedial action expeditiously—and thus satisfy directors' and officers' fiduciary duties, as well as other regulatory obligations—are in tension with a desire to accede to DOJ's request in order to earn full cooperation credit. Unlike the Pilot Program, which provided no guidance on how DOJ intended to use de-confliction requests, the new Policy seems to credit these concerns by making clear that such requests will be "narrowly tailored" and employed only for a "limited period of time." Moreover, under the new Policy, DOJ is obligated to notify the company "[o]nce the justification [for de-confliction] dissipates."
  首先，该政策对于司法部对“冲突消除”要求的使用（即司法部要求一家公司推迟调查步骤，通常指与员工证人面谈，直至政府有机会开展调查）给予了更详细的指引。如试点计划中所述，遵守冲突消除要求是公司执法政策中充分合作的要求。在公开意见和我们与司法部的沟通中，我们均提出了冲突消除要求可能让公司处于棘手境地的担心，其迅速开展调查和采取弥补行动（从而履行董事和高管受托义务以及其他监管义务）的能力可能与同意司法部要求（从而获得充分合作从宽处理）的愿望存在冲突。 虽然试点计划对于司法部拟如何使用这些要求未提供指引，新政策似乎考虑到这些顾虑，明确冲突消除要求将“视具体情形而定”，而且只在“有限的时间段内”使用。而且，根据新政策，“一旦[冲突消除的]正当理由不复存在”，司法部有义务通知公司。
- *Second*, as part of the requirements for full remediation, the Policy requires "[a]ppropriate retention of business records, and prohibiting the improper destruction or deletion of business records, including prohibiting employees from using software that generates but does not appropriately retain business records or communications."

> Although DOJ has not expounded on its expectations on this front, we think companies would be well advised to consider prohibiting employees from using personal devices for work-related communications and from using certain well-known messaging platforms for work-related communications, unless preservation of such communications can be assured.
> *其次*，作为充分弥补要求的一部分，公司执法政策要求“适当保留业务记录，禁止不当地销毁或删除业务记录，包括禁止员工使用生成但不适当保留业务记录或通讯的软件。”尽管司法部在这方面希望公司怎么做并不明确，但我们建议公司最好考虑禁止员工将个人设备用于工作相关通讯，以及将某些著名消息发送平台用于工作相关通讯，除非可保证保留该等通讯。

Finally, the new Policy provides further evidence that effective compliance programs are critical in DOJ's assessment of whether a company will secure a declination. In its recitation of the items required to demonstrate "timely and appropriate" remediation—a prerequisite for qualifying for the presumption of a declination—the Policy identifies many of the same elements present in the Pilot Program (e.g., culture of compliance, risk assessments). But the Policy goes one step further than the Pilot Program by incorporating certain guidance published by DOJ in February 2017 titled *Evaluation of Corporate Compliance Programs*, which we previously analyzed. In particular, the Policy requires (i) that companies conduct a "root cause analysis" into compliance lapses, and "where appropriate," take remedial steps "to address the root causes"; and (ii) the "availability of compliance expertise to the board." We note, moreover, that while DOJ's former Compliance Counsel left DOJ in 2017, the Department signaled its commitment to the evaluation of compliance programs by retaining the position.

最后，有效的合规计划对于司法部对一家公司是否可获得不起诉决定的评估非常关键，新政策对此提供了进一步的证明。在引述表明“及时适当弥补”（符合不起诉推定资格的前提条件）所需的项目时，该政策列出了试点计划中已有的许多要素（如合规文化、风险评估）。但该政策比试点计划更进一步，加入了司法部在 2017 年 2 月名为《公司合规计划评估》的文件中发布的某些指引（这些我们之前分析过）。具体而言，该政策要求，(i)公司对合规失效进行“根本原因分析”，并“在适当的情况下”“采取弥补措施”“来解决这些根本原因”；和(ii)“合规知识对于董事会的可获得性”。此外，我们认为，虽然司法部前合规法律顾问于 2017 年离开司法部，但司法部通过保留该职位表明了其对合规计划评估的承诺。

What to watch for in 2018:

2018 年所值得关注的：

- *With respect to the aggravating circumstance of "involvement by executive management," will DOJ be focused on parent-level executives, or will misconduct by executives in country-level subsidiaries qualify as "aggravating circumstances"? How will DOJ interpret and apply the "significant profit" exception?*
  就"牵涉执行管理层"的加重情节，司法部是否会专注于母公司层级的高管，或国家层级子公司高管的不当行为是否构成"加重情节"？司法部将如何解释和适用"可观利润"的例外情形？
- How will DOJ interpret the requirement related to the retention of business records, which is a condition to receiving full cooperation credit? Will we see cases where companies actually lose potential cooperation credit or are otherwise penalized for failing to ensure reasonable preservation of business-related communications?
  司法部将如何解释与保留业务记录有关的要求（这是获得充分合作从宽处理的一项条件）？我们是否会看到这样的案例：公司实际失去了因潜在的合作而获得从宽处理，或因未能确保合理保留业务相关通讯而受到处罚？

2. Coordinated, multi-jurisdiction enforcement continued at a robust clip.
协调、跨辖区执法继续快速增长

We observed last year that cooperation between U.S. and non-U.S. regulators had become the new norm. This was best evidenced by the coordinated resolutions in the VimpelCom matter, a $795 million settlement involving U.S. and Dutch prosecutors, and the Odebrecht / Braskem matter, a $3.5 billion resolution involving U.S., Brazilian, and Swiss enforcers.

我们去年曾表示，美国和非美国监管机构之间的合作已成为新常态。最好的证明有，VimpelCom 案的协调解决，在美国和荷兰检察官的参与下以 7.95 亿美元达成和解，以及 Odebrecht / Braskem 案，在美国、巴西和瑞士执法机构的参与下以 35 亿美元达成和解。

Evidence of this new norm was even more pronounced in 2017, with a noticeable trend toward enforcement actions involving non-U.S. companies that also are not issuers:

这一新常态在 2017 年得到了更多有力的证明，并出现了一个显著的趋势：涉及非美国及非发行人公司的执法行动。

- Rolls-Royce: In January, as part of an $800 million global settlement, Rolls-Royce resolved anti-bribery enforcement actions brought by DOJ, the UK's Serious Fraud Office ("SFO"), and Brazilian authorities. The settlements resulted from allegations that Rolls-Royce paid bribes to officials in more than 10 countries between 1989 and 2013. DOJ asserted jurisdiction over Rolls-Royce—which is neither an issuer nor a domestic concern—by alleging that the company conspired with an indirect U.S. subsidiary in Ohio, as well as with certain U.S. citizens. In November 2017, DOJ unsealed charges against five individuals involved in the matter; four pleaded guilty, and one remains a

fugitive.劳斯莱斯：一月，作为金额达 8 亿美元的全球和解的一部分，劳斯莱斯解决了司法部、英国严重欺诈局（“SFO”）和巴西当局发起的反贿赂执法行动。上述和解源自下列指控：劳斯莱斯于 1989 年至 2013 年间向十多个国家的官员支付了贿赂。司法部对劳斯莱斯（该公司既非发行人亦非美国国内法人）主张管辖权，指称该公司与俄亥俄州的一家间接美国子公司以及某些美国公民共谋。2017 年 11 月，司法部宣布了对此案牵涉的五名个人的指控；其中四名认罪，一名仍然在逃。

- Telia Company AB (“Telia”): In September, Swedish telecom company Telia agreed to pay a total of more than $965 million to authorities in the U.S. (i.e., DOJ and the SEC), the Netherlands, and Sweden. Notably, as in VimpelCom, the Telia resolution related to bribes paid in connection with operations in Uzbekistan’s telecom market. Of interest, DOJ and the SEC asserted jurisdiction based on the fact that certain bribe payments occurred when Telia was an issuer—even though the company deregistered as an issuer in September 2007. DOJ also alleged that certain conduct related to the bribery scheme occurred in the U.S., and that the company conspired with agents who were domestic concerns.
  Telia Company AB (“Telia”)：九月，瑞典电信公司 Telia 同意向美国（即司法部和证交会）、荷兰和瑞典的政府部门总计支付超过 9.65 亿美元。值得注意的是，如同 VimpelCom 案一样，Telia 案的和解涉及就乌兹别克斯坦电信市场业务支付的贿赂。有趣的是，司法部和证交会基于某些贿赂付款发生在 Telia 身为发行人（即使该公司在 2007 年 9 月已注销发行人身份）期间的事实主张管辖权。司法部还指称，与贿赂密谋有关的某些行为发生在美国境内，且该公司与身为美国国内法人的代理人共谋。

- SBM Offshore N.V. (“SBM”): In November, Dutch oil and gas services provider SBM agreed to pay $238 million in connection with a DPA with DOJ. As a prelude to this resolution, in November 2014, SBM entered into a $240 million settlement with Dutch authorities, and is expected to enter into a further settlement with Brazilian authorities and Petrobras in the near term. In 2014, DOJ had declined to pursue enforcement action against SBM based on the apparent absence of a jurisdictional nexus, but DOJ re-opened the case in 2016 based on new information reportedly showing that a U.S. subsidiary and a U.S. executive were involved in the misconduct at issue. In pursuing the enforcement action, DOJ alleged that SBM conspired with its U.S. subsidiary and the subsidiary’s agents. Aside from being another data point in the constellation of multi-jurisdictional enforcement actions, SBM is notable for other reasons:
  SBM Offshore N.V. (“SBM”)：11 月，荷兰油气服务提供商 SBM 同意就其与司法部达成的一项暂缓起诉协议支付 2.38 亿美元。作为这项和解的前奏，2014 年 11 月，SBM 与荷兰政府以 2.4 亿美元达成和解，并预期将于近期与巴西政府和 Petrobras 达成进一步的和解。2014 年，司法部基于管辖联系的明显缺乏而拒绝对 SBM 采取执法行动，但在 2016 年基于新的信息重启该案件，据称该项新信息表明，一家美国子公司和一名美国高管参与了上述不当行为。在寻求执法行动时，司法部指称，SBM 与其美国子公司及该子公司的代理人共谋。除了在一系列跨辖区执法行动中成为另一个数据点外，SBM 案值得注意还有以下其他原因：

  - While SBM voluntarily disclosed the conduct to U.S. authorities, it did not receive full credit for this disclosure because the company allegedly did not disclose the full facts to DOJ for one year. While one year seems to clearly exceed DOJ’s view of what constitutes a “timely” disclosure, we will be watching to see where the Department draws the line for disclosures made within a shorter period.

虽然 SBM 自愿向美国政府披露了该行为，但其未因此项披露而获得全面的从宽处理，因为该公司被指未在一年内向司法部披露全部事实。虽然一年似乎明显超过了司法部关于“及时”披露的观点，但司法部会为较短时间内作出的披露作出什么规定，我们还要拭目以待。

- Driven in significant part by the fact that SBM reportedly generated $2.8 billion in profits from bribes paid to government officials in five countries, the company faced a recommended fine range of $4.51 billion to $9.02 billion under the U.S. Sentencing Guidelines. The fact that SBM paid only a small fraction of that amount was due, in significant part, to DOJ's stated desire to avoid "a penalty that would substantially jeopardize the continued viability of the Company." Similar "ability to pay" issues have factored in to recent resolutions, including the Odebrecht / Braskem matter in 2016.
  SBM 据称通过向五个国家政府官员支付的贿赂中获利 28 亿美元，主要基于这一事实，该公司面临《美国量刑指南》下 45.1 亿至 90.2 亿美元的建议罚金范围。SBM 仅支付了上述金额的很小一部分，主要是因为司法部表示要避免“可能实质危及公司继续生存的处罚”。类似的“支付能力”问题考虑到了近期的和解案例，包括 2016 年的 Odebrecht / Braskem 案。

- SBM is yet another example of the long arm of the ongoing Operation Car Wash ("*Lava Jato*") investigation involving the Brazilian state oil company Petrobras. SBM allegedly paid bribes to Petrobras officials in Brazil, as well as officials in other countries.
  SBM 是表明正在进行的涉及巴西国有石油公司 Petrobras 的“洗车行动”（Operation Car Wash，“Lava Jato”）调查广泛影响力的又一例子。SBM 被指向巴西的 Petrobras 官员以及其他国家的官员支付了贿赂。

- DOJ announced guilty pleas in November 2017 for two former executives of SBM. Both executives pleaded guilty to one count of conspiracy to violate the FCPA. The plea agreement for one of the executives, former CEO Anthony Mace, was notable because it relied on a theory of "willful blindness"—instead of actual knowledge—to establish the defendant's knowledge of improper payments (the purpose of the conspiracy). Specifically, Mr. Mace admitted that he approved certain high-risk payments and deliberately avoided learning that the payments were in fact bribes. DOJ has rarely brought FCPA enforcement actions based on willful blindness, with the 2009 prosecution of Frederic Bourke being the most notable example.
  司法部于 2017 年 11 月宣布了两名前 SBM 高管的认罪请求。这两名高管均就一项共谋违反 FCPA 的指控认罪。其中一名高管前任首席执行官 Anthony Mace 的认罪协议值得注意，因为其使用“故意无视”理论（而非实际知情）来证明被告人知道（用于共谋的）不当付款。具体而言，Mace 先生承认，其批准了某些高风险付款，并有意避免了解这些付款实际上是贿赂。司法部很少基于故意无视发起 FCPA 执法行动，2009 年起诉 Frederic Bourke 案是最明显的例子。

- Keppel Offshore and Marine Ltd. ("Keppel"): In December, Keppel, a Singaporean company that specializes in offshore rig design, construction, and repair, agreed to pay more than $422 million to authorities in the U.S. (DOJ), Brazil, and Singapore to resolve allegations that the company paid bribes to a Brazilian political party and to employees of Petrobras. While Keppel is neither an issuer nor a domestic concern, DOJ alleged that it conspired with its U.S. subsidiary and the subsidiary's agents. In addition to

announcing the Keppel settlement, DOJ also unsealed charges against a senior member of Keppel's legal department who had pleaded guilty in August 2017 to conspiring to violate the FCPA and cooperated in the investigation. In connection with his plea agreement, the Keppel lawyer—a U.S. citizen living in Singapore—admitted that he drafted contracts used to overpay a third-party agent with the understanding that the excess funds would be passed on to Brazilian officials. Outside the U.S., a senior official in Singapore has testified that authorities there are continuing to investigate the conduct of particular Keppel employees.
Keppel Offshore and Marine Ltd. ("Keppel")：12 月，一家从事海上钻机设计、施工和维修的新加坡公司 Keppel 同意向美国（司法部）、巴西和新加坡的政府部门支付 4.22 亿美元，就该公司向巴西一个政党及 Petrobras 员工支付贿赂的指控达成和解。虽然 Keppel 既非发行人亦非美国国内法人，司法部指称，其与美国子公司及该子公司的代理人共谋。除宣布 Keppel 案和解外，司法部还宣布了对 Keppel 法务部一名高级工作人员的指控，该人于 2017 年 8 月就共谋违反 FCPA 的指控认罪，并配合了调查。除了认罪协议外，该 Keppel 律师（一名住在新加坡的美国公民）承认，其起草了用于向第三方代理人超额付款的合同，且了解该超额款项将转给巴西官员。在美国境外，新加坡一名高级官员证明，当地政府拟继续调查 Keppel 特定员工的行为。

Increased coordination was also evidenced in DOJ's acknowledgement, in various enforcement actions, of assistance from non-U.S. law enforcement authorities. To take one example, the Telia enforcement action reportedly involved assistance from authorities in more than a dozen jurisdictions that did not participate in the settlements: Austria, Belgium, Bermuda, the British Virgin Islands, the Cayman Islands, Cyprus, France, Hong Kong, Ireland, the Isle of Man, Latvia, Luxembourg, Norway, Switzerland, and the UK.

日益加强的协作还体现在，司法部在多项执法行动中确认收到来自非美国执法机构的协助。例如，Telia 执法行动据称得到了未参与和解的十多个辖区政府的协助，包括奥地利、比利时、百慕大、英属维尔京群岛、开曼群岛、塞浦路斯、法国、香港、爱尔兰、马恩岛、拉脱维亚、卢森堡、挪威、瑞士和英国。

Also of note, in 2017, DOJ and the SEC continued the recent practice of crediting fines and disgorgement paid to non-U.S. regulators in determining penalties and disgorgement amounts assessed by U.S. authorities. These offsets, which are discretionary, provide a significant incentive for companies to cooperate in multi-jurisdiction investigations. The chart below summarizes the multi-jurisdictional enforcement actions described above and demonstrates the significance of these offset amounts:

同样值得注意的是，2017 年，司法部和证交会继续了近期的做法，即，在确定美国政府部门评估的罚金和非法所得金额时扣除已向非美国监管机构支付的罚金和非法所得。这些可酌情给予的抵扣为在跨辖区调查中合作的公司提供了很大的激励。下表总结了上述跨辖区执法行动，并表明这些抵扣款金额巨大。

Matter 事项	Global Settlement 全球和解	Amounts by Regulator 监管机构收取的金额		U.S. Offsets / Credits 美国抵扣
Rolls-Royce	$800.2 million 8.002 亿美元	U.S. (DOJ) 美国（司法部）	$169.9 million criminal penalty 1.699 亿美元刑事罚金	$169.9 million reflects $25.5 million credit for amount paid to MPF 1.699 亿美元，反映了因向 MPF 付款而产生的 2,550 万美元的抵扣。
		UK (SFO) 英国（严重欺诈局）	$604.8 million 6.048 亿美元	
		Brazil (Ministério Público Federal ("MPF")) 巴西联邦公共部（"MPF"）	$25.5 million 2,550 万美元	
Telia	$965.6 million 9.656 亿美元	U.S. (DOJ) 美国（司法部）	$548.6 million criminal penalty before offsets (includes $40 million forfeiture and $500K fine paid by Telia's Uzbek subsidiary, Coscom) 抵扣前 5.486 亿美元刑事罚金（包括 4,000 万美元的罚没款以及 Telia 乌兹别克子公司 Coscom 支付的 50 万美元的罚金）	DOJ: Offset of up to $274 million, based on amount to be paid to OM 司法部：抵扣多达 2.74 亿美元，基于对 OM 的付款 SEC: $40 million offset for DOJ forfeiture; offset of up to $208.5 million, based on confiscation or forfeiture payments to OM or SPA 证交会：4,000 万美元抵扣司法部罚没款；多达 2.085 亿美元的抵扣基于 OM 或 SPA 的没收或罚没款。
		U.S. (SEC) 美国（证交会）	$457 million disgorgement before offsets 抵扣前 4.57 亿美元的非法所得	
		Netherlands (Openbaar Ministerie ("OM")) 荷兰（公共检察署）（"OM"）	$274 million criminal penalty 2.74 亿美元的刑事罚金	
		Sweden (Swedish Prosecution Authority ("SPA")) / Netherlands (OM) 瑞典（瑞典检察总署）/荷兰（公共检察署）（"SPA"）	Up to $208.5 million in confiscation or forfeiture payments 最高达 2.085 亿美元的没收或罚没款	
SBM	$478 million + to-be-determined amount of Brazil settlement 4.78 亿美元+巴西和解的待定金额	U.S. (DOJ) 美国（司法部）	$238 (includes $13.2 million forfeiture and $500K fine paid by SBM's U.S. subsidiary) 2.38 亿美元（包括 1,320 万美元的罚没款以及 SBM 美国子公司支付的 50 万美元的罚金	In determining the final penalty of $238 million, DOJ credited amounts paid in 2014 Netherlands settlement ($240 million) and SBM's provision for anticipated settlement in

		Netherlands (OM) 荷兰（OM）	$200 million (disgorgement in 2014 settlement) $40 million (fine in 2014 settlement) 2 亿美元（2014 年和解中没收的非法所得） 4,000 万美元（2014 年和解中的罚款）	Brazil with the MPF 在确定 2.38 亿美元的最终处罚时，司法部抵扣了 2014 年荷兰和解中支付的金额（2.4 亿美元）以及 SBM 在巴西与 MPF 预期和解预留的资金。
		Brazil (MPF) 巴西（MPF）	Amount to be determined; a 2016 settlement of $342 million was rejected by the Fifth Chamber for Coordination and Review and Anti-corruption 金额待定；2016 年 3.42 亿美元的和解被协调审核反腐败第五委员会拒绝	
Keppel	$422.2 million 4.222 亿美元	U.S. (DOJ) 美国（司法部）	$422.2 million criminal penalty before offsets 抵扣前 4.222 亿美元刑事罚金	Up to $316.6 million offset (equal to amount to be paid to authorities in Singapore and Brazil) 多达 3.166 亿美元的抵扣（等于拟在新加坡和巴西向政府支付的金额）
		Brazil (MPF) 巴西（联邦公共部）	$211.1 million 2.111 亿美元	
		Singapore (Attorney General's Chambers) 新加坡（司法部长办公室）	$105.5 million 1.055 亿美元	

3. **With the exception of repeat offenders, DOJ and the SEC may be moving away from imposing corporate monitors—even in cases involving widespread and systematic violations—when companies make significant and early investments in compliance.**
除累犯外，如果公司在合规方面进行重大和及早的投入，司法部和证交会可能不再指派公司监管员，即使是涉及广泛和系统违法行为的案件。

In another notable development, U.S. regulators did not require independent compliance monitors in connection with the four largest FCPA settlements in 2017: Rolls-Royce, Telia, SBM, and Keppel (all discussed above). Rolls-Royce, SBM, and Keppel do have annual self-reporting obligations in their settlement agreements requiring them to submit annual reports to DOJ regarding the status of their compliance programs, while Telia has no reporting obligation. The Telia resolution is particularly notable given that a monitor was imposed in the 2016 Vimpelcom resolution, with both cases focusing on similar bribery schemes in the telecom sector in Uzbekistan. In each case, DOJ highlighted the companies' compliance efforts while the investigation was ongoing:

另外一个值得关注的动态是，美国监管机构未就 2017 年四项最大的 FCPA 和解案（即 Rolls-Royce、Telia、SBM 和 Keppel 案，上文均有讨论）要求指派独立合规监管员。Rolls-Royce、SBM 和 Keppel 在其和解协议中均有自行报告义务，要求其就其合规计划的状况向司法部提交年度报告，而 Telia 没有任何报告义务。Telia 的和解令人格外关注是因为，2016 年 Vimpelcom 案的和解中指派了一名监管员，这两个案件均专注于乌兹别克斯坦电信行业的类似贿赂密谋。在上述每个案件中，司法部均重点介绍了调查进行过程中这些公司的合规努力：

- In Rolls-Royce, DOJ cited the company's steps to enhance compliance procedures to review and approve intermediaries; its implementation of enhanced internal controls; and other remedial measures, including terminating business relationships with employees and intermediaries, as reasons it declined to require a monitor.
在 Rolls-Royce 案中，司法部引述了其拒绝要求指派监管员的原因如下：公司增强审批中介机构的合规流程的步骤；增强内部控制的实施；以及其他弥补措施，包括与员工和中介机构终止业务关系。

- In Telia, DOJ pointed in its DPA to the company's remediation during the investigation as among the reasons it would not require a monitor. The remediation was of particular importance, as Telia terminated not only the individuals involved in the misconduct but also their supervisors, including directors who participated in the decision to enter the Uzbek market without conducting sufficient due diligence.
在 Telia 案中，司法部在暂缓起诉协议中解释其不会要求指派监管员的主要原因是公司的弥补。弥补尤其重要，因为 Telia 不仅解雇了参与不当行为的个人，还解雇了他们的主管，包括未经充分尽职调查参与作出进入乌兹别克市场决定的董事。

- In SBM, DOJ noted approvingly that, prior to resolution, the company hired a full-time Governance and Compliance Officer who could report to the Board of Directors; engaged a compliance consultant to enhance its program; initiated a whistleblower hotline; trained its business personnel; and had completed three years of monitoring under the supervision of Dutch authorities.
在 SBM 案中，司法部赞许地指出，在达成和解之前，该公司聘请了一名全职治理和合规官，直接对董事会报告；聘请了一名合规顾问来增强其计划；启动了举报热线；培训了业务人员；并且在荷兰政府监督下完成了三年的监管。

- In Keppel, DOJ cited the company's "extensive remedial measures" in its decision not to impose a monitor. Among these measures were personnel actions against 17 current and former employees (including nearly $9 million in financial sanctions against certain employees), individualized anti-corruption and compliance training for certain employees, and ongoing reviews of its compliance program with the assistance of outside advisors.
  在 Keppel，司法部在其不指派监管员的决定中引述了该公司"广泛的弥补措施"。这些措施包括针对 17 名现任和前任员工的人事行动（包括对某些员工近 900 万美元的罚款）、为某些员工提供的个性化反腐败和合规培训以及在外部顾问协助下进行的对其合规计划的审核。

In contrast, monitors were imposed in the three FCPA resolutions in 2017 involving companies that had previously resolved other FCPA matters: (i) Zimmer Biomet Holdings, Inc. (formerly Biomet, Inc.), which agreed to a three-year monitorship as part of a $30 million resolution with DOJ and the SEC, and which previously had resolved FCPA charges in 2012; (ii) Halliburton, which in July agreed to an 18-month monitorship as part of a $29 million resolution with the SEC, and which previously had resolved FCPA charges in 2009; and (iii) Orthofix International N.V., which in November agreed to a one-year monitorship as part of a $6 million resolution with the SEC, and which previously had resolved FCPA charges in 2012.

对比之下，在 2017 年三项 FCPA 和解中对之前涉及解决其他 FCPA 事项的公司指派了监管员：(i) Zimmer Biomet Holdings Inc.（前 Biomet, Inc.），该公司在与司法部和证交会达成的 3,000 万美元的和解协议中同意三年的监管期，该公司曾于 2012 年就 FCPA 指控达成和解；(ii) Halliburton，该公司在 7 月在其与证交会达成的 2,900 万美元的和解协议中同意 18 个月的监管期，该公司曾于 2009 年就 FCPA 指控达成和解；和(iii) Orthofix International N.V.，该公司在 11 月在其与证交会达成的 600 万美元的和解协议中同意一年的监管期，该公司曾于 2012 年就 FCPA 指控达成和解。

The only other company in 2017 to receive a monitor was the Chilean chemical and mining company Sociedad Química y Minera de Chile ("SQM"), which reached a $30 million settlement with DOJ and the SEC. SQM agreed to a two-year monitor with self-reporting in the third year. While the conduct at issue in the SQM case does not appear to be more egregious or systemic than other cases in 2017 where companies avoided monitors, DOJ's insistence on a monitor in the SQM case seems to be due to the fact that at the time of the resolution, the company was still in the process of implementing an enhanced compliance program and had not had the opportunity to test the effectiveness of that program.

2017 年内被指派监管员的唯一一家公司是智利化学采矿公司 Sociedad Química y Minera de Chile（"SQM"），其以 3,000 万美元与司法部和证交会达成和解。SQM 同意两年的监管期，并在第三年进行自行报告。虽然 SQM 案中的有关行为与 2017 年有关公司避免被指派监管员的其他案件相比似乎并非更恶劣或系统化，但司法部在 SQM 案中坚持指派监管员似乎是由下列事实引起：在达成和解时，该公司仍在实施增强合规计划的过程中，尚未有机会检验该合规计划的有效性。

What to watch for in 2018:

2018 年所值得关注的：

- *Did the absence of corporate monitors in the Telia, Rolls-Royce, SBM, and Keppel resolutions portend a growing aversion to monitorships by DOJ and the SEC, so long as a company makes a significant investment in compliance program enhancements during the pendency of its investigation or at least as a condition of the resolution? In other words, will monitorships be reserved for recidivists?*
  Telia、Rolls-Royce、SBM 和 Keppel 和解中未指派公司监管员是否预示，司法部和证交会会日益避免使用监管员政策，只要公司在调查未决期间或至少作为和解的一项条件对合规计划的增强进行大量投入？换言之，监管员政策是否将为累犯保留？

4. DOJ's focus on individual prosecutions could lead to a stronger tether between individual and corporate enforcement actions.
司法部对个人起诉的专注可能导致个人和公司执法行动之间的更强联系

We have previously discussed how DOJ's focus on individual accountability—as announced in the September 2015 "Yates Memo"—appeared to influence the actions of prosecutors, and particularly that prosecutors are placing enhanced import on securing evidence related to individuals at the outset of investigations. The new administration has not revised the policy described in the Yates Memo, and statements from DOJ's leadership indicate that the Department will continue to focus on individual accountability. Attorney General Sessions, for example, explained in an April 2017 speech that DOJ "will continue to emphasize the importance of holding individuals accountable for corporate misconduct."

我们之前曾讨论过，司法部对个人责任的关注（在 2015 年 9 月的"耶茨备忘录"中宣布）对检察官的行动似乎有哪些影响，以及检察官将在调查伊始更努力地取得与个人相关的证据。新政府未修改耶茨备忘录中所述的政策，司法部官员发布的声明表明，司法部将继续专注于个人责任。例如，司法部长 Sessions 在 2017 年 4 月的一场演讲中解释说，司法部"将继续强调就公司不当行为对个人问责的重要性。"

DOJ's actions in 2017 underscore its prioritization of individual prosecutions, including at trial:

司法部在 2017 年的行动表明其对起诉个人的着重，包括在庭审中：

- DOJ charged 20 individuals with FCPA violations last year, the second highest number since the statute's passage.
  司法部去年以违反 FCPA 指控了 20 名个人，数量是自该法律通过以来第二多的一年。
- DOJ also secured its first FCPA trial victory in six years when a jury convicted Macau businessman Ng Lap Seng in connection with a bribery scheme intended to secure the construction of a United Nations facility in Macau.
  司法部还在六年内取得其首次 FCPA 法庭胜诉，一个陪审团就一项旨在取得在澳门联合国设施施工合同的贿赂密谋判定澳门商人吴立胜有罪。
- In addition, DOJ won convictions in two non-FCPA corruption cases involving the receipt of bribe payments and the subsequent laundering of funds by a former Guinean Minister

of Mines and the Director of South Korea's Earthquake Research Center.
此外，司法部在两项非 FCPA 腐败案件中胜诉，这些案件涉及前几内亚矿业部长和韩国地震研究中心主任收受贿赂和后续的洗钱。

While the overall number of individual prosecutions increased in 2017, that number is lower than we might expect given the stated goal of the Yates Memo—to increase individual accountability in cases involving *corporate* wrongdoing. Notably, of the nine corporate enforcement actions brought by DOJ in 2017, only three have involved corresponding prosecutions of individuals to date: Rolls-Royce, SBM, and Keppel. Of course, 2018 could result in further prosecutions of individuals—or the unsealing of existing charges—relating to the six other corporate defendants that resolved FCPA charges in 2017, much like DOJ announced charges in 2017 against a former sales executive of Embraer SA a year after the 2016 resolution with Embraer itself.

虽然 2017 年起诉个人案件的总数上升，但鉴于耶茨备忘录中设定的目标（加大涉及公司不当行为的案件中的个人问责），该数字仍低于我们的预期。值得注意的是，在 2017 年司法部发起的九项公司执法行动中，截至目前只有三项涉及对个人的对应起诉：Rolls-Royce、SBM 和 Keppel。当然，在 2018 年，就 2017 年已解决 FCPA 指控的六个其他公司被告人，可能会出现更多的对个人起诉（或现有指控的解封），就像司法部在 2016 年与 Embraer SA 达成和解后又于 2017 年宣布对 Embraer 一名前销售高管提出指控一样。

We continue to see examples of the potential pitfalls for company counsel post-Yates, including the possibility that employees who are the subject of criminal prosecution or civil enforcement actions may seek discovery of attorney work product created by company counsel (e.g., interview memoranda) and used in the company's cooperation efforts. For example, in December a federal magistrate judge in the Southern District of Florida held in *SEC v. Herrera* that company counsel's "oral downloads" of witness interviews to SEC attorneys waived work product protection over the underlying interview memoranda, and ordered the company's law firm to produce the subject interview memoranda to the individual defendants in an SEC enforcement action.

我们继续看到关于耶茨备忘录公布后公司法律顾问所面临潜在陷阱的例子，包括作为刑事起诉或民事执法行动对象的员工可请求开示公司法律顾问创建且用于公司合作努力的律师工作成果（如面谈备忘录）。例如，在 12 月，一名佛罗里达南区联邦裁判官在证交会诉 Herrera 一案中认定，该公司法律顾问"以口头方式下载"证人面谈记录提交证交会，放弃了对相关面谈备忘录的工作成果保护，并命令该公司的法律顾问对证交会执法行动中的个人被告人提交主题面谈备忘录。

Given the continued focus on individual accountability, not to mention the requirement under agency law and the Yates Memo that individual wrongdoing is the foundation for corporate liability, we could envision a situation in which DOJ's decisions on whether to pursue corporate resolutions could increasingly turn on the ability to pursue cases against individuals. We do not mean to suggest that individual charges will need to be brought in every instance before corporate charges are pursued, or that DOJ will make individual prosecutions a *sine qua non* for corporate enforcement actions. But, given the continued drumbeat of emphasis on individual accountability, it seems reasonable to wonder whether DOJ might decline to pursue certain corporate prosecutions when a clear plan to prosecute individuals is lacking.

鉴于对个人问责的持续关注，更不用提相关机构法律和耶茨备忘录关于个人不当行为是公司责任基础的要求，我们可以设想一个情形，司法部关于是否达成公司和解的决定可能会日益加强在案

件中对个人追责的能力。我们并非暗示，在提起公司指控之前总是需要提起个人指控，或司法部将把个人起诉作为公司执法行动的必要条件。鉴于强调个人问责的持续迹象，我们可以合理地猜测，在缺乏起诉个人的明确计划的情况下，司法部是否可能拒绝对某些公司提起诉讼。

Of course, we would not expect DOJ to bring charges against all individual wrongdoers subject to FCPA jurisdiction, particularly in cases involving non-U.S. citizens whose conduct principally occurred outside the U.S. Consistent with a theme that we explored last year, we expect that there will continue to be cases where DOJ will defer to non-U.S. regulators in locations with proven track records of enforcement. In connection with the Department's 2016 prosecution of Embraer, then-Assistant Attorney General Leslie Caldwell observed that DOJ would not pursue charges against individuals given prosecutions by authorities in Brazil—a country that appears to have established its anti-corruption enforcement bona fides in the eyes of DOJ—and Saudi Arabia. As an interesting footnote to Caldwell's statement (and as noted above), in December 2017 DOJ did announce a plea agreement with one former Embraer executive, a UK citizen who resided in the United Arab Emirates. The Embraer example suggests that DOJ will apply an increasingly nuanced analysis to individual prosecutions, as part of what we expect will be an increased effort to more closely link individual and corporate prosecutions.

当然，我们并不预期司法部会对所有受 FCPA 管辖的个人违法者提起指控，尤其是在涉及其行为主要发生在美国境外的非美国公民的案件中。根据我们去年分析的一个情况，我们预测仍会有司法部将案件交由具有可信过往执法记录地区的非美国监管机构处理的情形。关于司法部 2016 年对 Embrer 的起诉，当时的助理司法部长 Leslie Caldwell 指出，鉴于巴西（在司法部看来似乎已树立反腐败执法威信的国家）和沙特阿拉伯政府已起诉，司法部不会对个人提起指控。作为对 Caldwell 声明的一项有趣补充（以及如上所述），2017 年 12 月，司法部宣布与一名前 Embraer 高管（一名居住在阿联酋的英国公民）达成认罪协议。该 Embraer 高管暗示，司法部将对个人起诉采用日益细致的分析方法，正如我们预期的，这是连接个人和公司起诉的更多努力的一部分。

What to watch for in 2018:

2018 年所值得关注的：

- *Does DOJ announce any other charges of individuals involved in the conduct underlying the corporate resolutions announced in 2017?*
  司法部是否会宣布对 2017 年宣布的公司和解的相关行动中所涉及个人的任何其他指控？
- *Will the trend of unsealing charges against individuals around the same time as the announcement of a corporate settlement accelerate?*
  在公司和解声明发布几乎同时宣布对个人指控的趋势是否会加快？
- *Will certain corporate resolutions be delayed or abandoned because individual accountability cannot be assured?*
  某些公司和解是否会因为无法保证个人问责而被推迟或放弃？

5. "Broken windows" and the aggressive interpretation of the internal controls provisions may be on the wane at the SEC.
"破窗"和对内部控制规定的激进解释在证交会可能会越来越少

Ever since 2013, when then-SEC Chairwoman Mary Jo White endorsed a "broken windows" approach to securities law enforcement, we have seen evidence of the SEC pursuing what many view as relatively minor FCPA violations, or, as noted in past years, advancing aggressive interpretations of the scope of the internal controls provision. For example, the SEC's first enforcement action in 2017 (which occurred during the Obama administration) involved books and records and internal controls violations against Mondelēz International, Inc. ("Mondelēz")—and its subsidiary Cadbury Limited—in connection with certain payments that Cadbury India made to a third-party agent. Notably, the SEC did not allege that the agent paid bribes, but rather that the company's failure to conduct "appropriate due diligence" on the agent or to monitor the agent's activities created the "risk" that the funds could be used for an improper purpose.

2013 年，当时的证交会主席 Mary Jo White 支持在证券执法中采用"破窗"方法，自那以来，我们注意到，有证据表明，证交会对许多人认为情节较轻的 FCPA 违法行动进行了执法，或如同我们在过去几年注意到的，对内部控制规定的适用范围采用激进的解释。例如，证交会在 2017 年的首次执法行动（发生在奥巴马执政期间）是针对 Mondelēz International, Inc. ("Mondelēz")及其子公司 Cadbury Limited 违反账簿和记录以及内部控制规定的行为，牵涉到 Cadbury India 对某第三方代理人进行的某些付款。值得注意的是，证交会并未指控该代理人支付了贿赂，而是该公司未对该代理人进行"适当的尽职调查"或监控该代理人的活动，以致产生资金可能被用于不当用途的"风险"。

Based on comments from the current SEC leadership, the "broken windows" era may be winding down. For example, SEC Commissioner Michael Piwowar called the approach "misguided" in an October speech. According to Mr. Piwowar, the "broken windows approach" did "boost[] our enforcement statistics, [but] it did not meaningfully improve investor protection." We do not yet have enough data points to assess how this statement will translate in practice, and we will be watching whether the SEC continues to pursue small cases arising out of non-systematic problems.

基于当前证交会领导集体的意见，"破窗"时代可能正在结束。例如，证交会专员 Michael Piwowar 在十月的一场演讲中称该方法"被误导"。根据 Piwowar 先生的观点，"破窗方法"的确"促进了我们的执法统计，但并未有效地改善投资者保护。"我们尚未掌握足够的数据点以评估此项声明在实践中的意义，我们将关注证交会是否会继续追查由非系统性问题引起的小案件。

6. Other notable U.S. anti-corruption developments in 2017.
2017 年值得注意的其他美国反腐败动态。

The Supreme Court's *Kokesh* decision could affect the SEC's enforcement strategies in FCPA cases.

最高法院对 Kokesh 案的裁定可能影响证交会在 FCPA 案件中的执法策略。

In June 2017, the Supreme Court in *Kokesh v. SEC* limited the SEC's ability to impose disgorgement as a remedy in enforcement matters. The SEC had long asserted that disgorgement is an equitable remedy not subject to any statute of limitations, and had applied disgorgement well beyond the statutory five-year limitations period applicable to penalties under

28 U.S.C. § 2462. The Court disagreed, holding unanimously that disgorgement is a penalty within the meaning of § 2462, and therefore is limited to ill-gotten gains flowing from conduct falling within the five-year limitations period. The Court rejected the SEC's argument that disgorgement is remedial, finding instead that the principal purpose of disgorgement is to punish and deter future misconduct.

2017 年 6 月，最高法院在 Kokesh 诉证交会一案中限制了证交会将没收非法所得作为执法事项中一项救济的能力。证交会一直主张，没收非法所得是不受任何诉讼时效限制的公平救济，并且曾在超过《美国法典》第 29 篇第 2462 条下适用于处罚的五年法定诉讼时效很久后没收非法所得。法院不认可此做法，一致认定，没收非法所得是第 2462 条下的处罚，因此仅限于五年诉讼时效内发生的行为导致的非法所得。法院拒绝采纳证交会关于没收非法所得是救济的论点，认为，没收非法所得的主要目的是惩罚和威摄未来的不当行为。

While the *Kokesh* action related to violations of the Investment Companies Act and Investment Advisors Act, the case has potential implications for FCPA enforcement:

尽管 Kokesh 案涉及违反《投资公司法》和《投资顾问法》的行为，该案对 FCPA 执法也有潜在影响：

- The most likely consequence of *Kokesh* is that the SEC will request tolling agreements more frequently and earlier in FCPA investigations to preserve its ability to obtain disgorgement in cases where the date of the conduct may post limitations issues. In a similar vein, we will be watching to see if the SEC is less willing to provide extensions in connection with document requests and, potentially, seeks to bring investigations to a close faster. SEC Co-Director of Enforcement Steven Peikin suggested as much when he explained that, in light of *Kokesh*, "we have no choice but to respond by redoubling our efforts to bring cases as quickly as possible." A question that is likely to result from more aggressive tolling requests is whether companies faced with such requests will be willing to risk the loss of cooperation credit—or the SEC initiating proceedings—by resisting demands for tolling agreements.
  Kokesh 案最可能的后果是，在行为时间可能超过时效的案件中，证交会将更频繁地要求时效中止协议，并且在 FCPA 调查的早期保留其没收非法所得的能力。与此类似，我们将关注，证交会是否会不再愿意就所要求的文件提供展期，以及是否会可能更快地结束调查。证交会执法联席主任 Steven Peikin 也有此暗示，就 Kokesh 案，他解释说，"我们没有选择，只能加倍努力尽快结案。"更激进的时效中止要求可能导致的问题是，面临该等要求的公司是否会愿意承担拒绝时效中止协议要求而失去合作宽大处理（或证交会启动法律程序）的风险。
- Disgorgement accounts for an overwhelming percentage of the SEC's financial recoveries in FCPA resolutions in recent years. After *Kokesh*, absent a tolling agreement, the SEC can only obtain disgorgement of gains that flow from conduct occurring within the five years prior to the resolution. However, because the SEC retains great flexibility in determining the penalties that it assesses in enforcement actions (e.g., assessing separate penalties for each violation of the books and records and internal controls provisions),the SEC may be able to demand increased penalties to offset potential decreases in available disgorgement.
  非法所得在证交会近年 FCPA 和解案追缴款中占有相当大的比例。在 Kokesh 案后，如无

时效中止协议，证交会仅能就和解前五年内发生的行为产生的收益没收非法所得。但是，由于证交会在确定其在执法行动中评估的处罚时保留了很大的灵活性（如为每项违反账簿和记录和内部控制规定的行为分别评估处罚），证交会能够要求更多处罚，以抵消可没收非法所得的潜在减少。

- The *Kokesh* decision could have collateral consequences given that disgorgement is now deemed a penalty for some purposes. For example, the IRS issued guidance in December 2017 that, in light of *Kokesh*, disgorgement amounts for securities violations may not be deducted from personal income taxes. Likewise, characterizing disgorgement as a penalty may have implications in efforts to obtain insurance or indemnification for disgorgement awards.
  Kokesh 案裁定可能有附带后果，因为没收非法所得现在被视为某种目的的处罚。例如，美国国税局在 2017 年 12 月发布指引称，鉴于 Kokesh 案，证券违法行为的没收非法所得金额不得从个人所得税中扣减。同样，将没收非法所得视为处罚可能对于为没收非法所得裁定取得保险或补偿的努力产生影响。

- In a footnote in the *Kokesh* opinion, the Supreme Court left open the possibility that the SEC lacks the authority to order disgorgement at all. As a result, *Kokesh* may call into question whether the SEC can order disgorgement in an FCPA case, especially where the defendant has not been found liable for any underlying offense. Defendants in an FCPA prosecution of former Och-Ziff hedge fund executives have gone even further, arguing in a pending motion to dismiss in the Eastern District of New York that the SEC lacks the authority to impose *any* punitive relief outside the five-year limitations period, including injunctive relief.
  在 Kokesh 案意见脚注中，最高法院未排除证交会根本无权命令没收非法所得的可能性。因此，Kokesh 可能会带来以下疑问，证交会是否能在 FCPA 案件中命令没收非法所得，尤其是在被告人未因任何相关违法行为而被认定有责任的情况下。在一项起诉 Och-Ziff 对冲基金高管的 FCPA 案件中的被告人则更进一步，在纽约州东区联邦法院的一项未决驳回动议中主张，证交会无权在五年诉讼时效后施加任何惩罚性救济，包括禁制令。

Healthcare remains a focus area—and DOJ is consolidating forces to increase efficiencies in this space.
医疗保健仍然是一个重点领域，司法部拟整合力量提高这一领域的效率

In August, DOJ Fraud Section Acting Chief Sandra Moser announced that attorneys from the section's Healthcare Fraud Unit Corporate Strike Force would begin to work together with prosecutors in the FCPA Unit to jointly investigate corruption cases spanning both foreign and domestic conduct. Moser cited the Department's resolution with a global medical device manufacturer in 2016 as an example of successful partnership between healthcare and FCPA prosecutors. DOJ charged the manufacturer with violations of both the Anti-Kickback Statute (related to conduct in the U.S.) and the FCPA (related to conduct in Latin America).

八月，司法部欺诈司代理负责人 Sandra Moser 宣布，该司医疗保健欺诈科公司行动组的检察官将开始与 FCPA 科的检察官合作，共同调查同时涉及境内外行为的腐败案件。Moser 以 2016 年司法部与一家全球医疗器械制造商达成的和解案举例说明医疗保健和 FCPA 检察官之间成功的合作。司法部以违反《反回扣法》（与美国的行为有关）和 FCPA（与拉丁美洲的行为有关）指控该制造商。

Expansion of corruption-related investigations and enforcement in the sports industry.
扩大体育界腐败相关的调查和执法。

In 2017, DOJ continued an aggressive investigation of corruption in international soccer. In total, the Department has charged more than 40 individuals in the ongoing investigations of the Fédération Internationale de Football Association ("FIFA"), and related entities and individuals. In December, DOJ secured convictions at trial under racketeering and wire fraud statutes of the former president of the South American soccer federation, Juan Ángel Napout, and the former president of Brazil's federation, José Maria Marin. A third individual, former Peruvian soccer federation chief Manuel Burga, was acquitted. DOJ's focus is not limited to soccer: in September, DOJ announced the arrest of 10 individuals alleged to have engaged in steering NCAA college basketball players to particular financial advisors.
2017 年，美国司法部继续对国际足球界的腐败问题开展积极调查。在对国际足球联合会（"国际足联"）展开的持续调查中，美国司法部总计起诉了 40 多名个人，以及相关实体和人员。12 月，南美洲足联前主席 Juan Ángel Napout 以及巴西足协前主席 José Maria Marin 在美国司法部依照敲诈勒索和电信欺诈法律对其提起的指控中被定罪。第三名个人即秘鲁足联前主席 Manuel Burga 被宣判无罪。美国司法部的关注点并不仅仅在足球界：9 月，美国司法部宣布逮捕 10 名个人，该等个人涉嫌要求美国全国大学体育协会（NCAA）的大学篮球运动员使用特定财务顾问的服务。

These prosecutions are important reminders that anti-corruption enforcement is not limited to the FCPA, and that the racketeering and fraud statutes are important tools that allow DOJ to pursue corruption charges, including against bribe recipients.
上述指控释放了重要信号，即反腐败执法并不限于美国反海外腐败法（FCPA），关于敲诈勒索和欺诈的法律也是美国司法部用以提起腐败指控（包括针对受贿人的指控）的重要工具。

The sports industry has been active on the compliance front as well; the International Olympic Committee and City of Los Angeles included a novel anti-corruption covenant in the host city agreement for the 2028 summer games to demonstrate their commitment to clean procurement and planning.
在合规方面，体育界也一直处于活跃状态；国际奥委会和洛杉矶市在 2028 年夏季奥运会举办城市协议中新增了反腐败约定，以证明其关于廉洁采购和规划的承诺。

Data breaches and hacking incidents will prompt more investigations.
数据外泄和黑客事件将引起更多调查。

2017 continued to produce ripple effects from corporate data breaches and hacking incidents. For instance, the disclosure in early 2016 of the Panama Papers, a massive trove of documents relating to the Panamanian law firm Mossack Fonseca, led more than 70 governments around the world to launch investigations that encompassed inquiries into more than 6,500 companies and individuals, according to the International Consortium of Investigative Journalists. The release continues to spur both new investigations and legislative action, such as the EU's December 2017 anti-money laundering directive, which will require companies to disclose the true identity of their ultimate beneficial owners. A similar leak of financial documents occurred in late 2017— the so-called Paradise Papers—which are comprised principally of materials obtained from offshore legal service provider Appleby and corporate services provider Estera. It remains to be seen whether the Paradise Papers will result in significant investigative activity.
2017 年，来自公司数据外泄和黑客事件的连锁反应依然持续。例如，根据国际调查记者联盟对外公布的信息，2016 年初从巴拿马律师事务所 Mossack Fonseca 流出的大量文件即"巴拿马文件"

导致全世界 70 多个政府启动调查，包括对 6,500 多个公司和个人进行调查。前述泄露事件继续激起新的调查和立法行动，例如欧盟于 2017 年 12 月就反洗钱指令的修订达成一致，修订后的反洗钱指令将要求公司披露其最终受益所有人的真实身份。2017 年底发生了一起类似的财务文件泄露事件，即所谓的"天堂文件"事件，泄露的文件主要包括从离岸法律服务提供商 Appleby 和企业服务提供商 Estera 获得的资料。至于天堂文件事件是否会引起大量调查活动的出现，还有待观察。

Part II: International Trends
第二部分：国际趋势

Enforcement activity outside the U.S. continued to rise in 2017 and appears set to continue on an upward trend. At the same time, legislative developments gave (or are set to give) several countries new legal and enforcement tools to use in the fight against corruption, with a focus on strengthening anti-corruption laws, incentivizing effective compliance programs, and rewarding cooperation with government investigations.
2017 年美国以外的执法活动继续增多，且似乎处于不断增长的趋势。同时，立法的不断发展为多个国家提供了（或必然提供）打击腐败的新型法律手段和执法手段，其重点为加强反腐败法律、激励有效的合规计划以及奖励配合政府调查的做法。

1. Enforcement
执法

Europe
欧洲

United Kingdom
英国

The Serious Fraud Office had an active year in anti-corruption enforcement against both companies and individuals, beginning with its record-setting £497 million (~$605 million) DPA with Rolls-Royce in January:
英国严重欺诈局（SFO）在 1 月份与劳斯莱斯达成一份暂缓起诉协议，劳斯莱斯同意向 SFO 支付创纪录的 4.97 亿英镑（约 6.05 亿美元）罚金，从而开启了 SFO 积极针对公司和个人开展反腐败执法的一年。

- In September 2017, the agency reported that it had secured seven convictions in a matter involving corrupt payments in Angola by freight forwarding company F.H. Bertling Ltd., following guilty pleas entered by the company and six of its former employees.
- 2017 年 9 月，SFO 称，对于货运公司 F.H. Bertling Ltd.在安哥拉进行腐败付款一案，在该公司及其六名前雇员进行认罪答辩后，SFO 成功对 7 个被告定罪。

- In November, the agency brought charges against four former executives of Monaco-based Unaoil and its Dutch client SBM Offshore in connection with allegations of improper payments made to secure contracts in Iraq.
- 11 月，SFO 针对摩纳哥公司 Unaoil 的四名前高官及 Unaoil 的荷兰客户 SBM Offshore 提起控告，指控其为获得在伊拉克的合同而进行不当付款。

- The SFO also opened a number of new investigations—in September, SFO Director David Green reported that 12 bribery-related investigations had been opened in the preceding 12 months. A number of those investigations involve major multinational companies.
- SFO 还启动了许多新调查——9 月，SFO 主任 David Green 称在过去的 12 个月里启动了 12 起与贿赂相关的调查。其中许多调查涉及大型跨国公司。

Although the SFO's future was in question in the early part of the year, when the Conservative Party called a general election and included in its election manifesto a pledge to incorporate the SFO into the National Crime Agency ("NCA")—the FBI-style agency that Prime Minister Theresa May established while acting as Home Secretary—that plan appears to have been shelved after the Conservative Party lost its Parliamentary majority in the election. More broadly, the UK Government has taken steps over the course of the past year that reflect a continuing commitment to enforcement of anti-corruption and anti-money laundering laws. The Criminal Finances Act, which was passed in April 2017, introduced a series of measures designed to help UK authorities tackle money laundering, including (among others) the introduction of new offenses relating to the facilitation of tax evasion, new seizure and forfeiture powers, changes to the suspicious activity reporting regime, and unexplained wealth orders (which allow a UK court to order a politically exposed person or individual suspected of involvement in serious crime to explain how he lawfully acquired specified assets). The UK Anti-Corruption Strategy, published in December 2017, describes additional steps the UK Government intends to take to strengthen its response to economic crime, including the appointment of a new Minister for Economic Crime, the creation of a National Economic Crime Centre within the NCA, and a continued commitment to transparency-enhancing measures such as registers of public beneficial ownership.
上半年，当保守党要求举行大选并在其竞选纲领中承诺将 SFO 纳入首相 Theresa May 在担任内政大臣时建立的类似于 FBI 的机构英国国家打击犯罪调查局（"NCA"）时，SFO 的未来尚不明确，但是在保守党于大选中失去议会多数党地位后，前述计划似乎已被搁置。从更广层面来讲，在过去一年中，英国政府采取了一系列反映其持续致力于反腐败和反洗钱执法的措施。英国 2017 年 4 月通过的《刑事金融法》引入了一系列旨在帮助英国权力机关打击洗钱活动的措施，包括（但不限于）引入新的关于纵容逃税的违法行为、新的查封和没收权力、可疑活动报告制度的变化，以及不明财产令（该法令允许英国的法院命令涉嫌参与严重犯罪的政治人物或个人解释其如何合法获得特定财产）。英国 2017 年 12 月发布的反腐败策略描述了英国政府拟用于加强其应对经济犯罪之能力的其他措施，包括任命一名新的大臣负责经济犯罪，设立隶属于 NCA 的国家打击经济犯罪中心，以及继续致力于提高透明度的措施，例如登记公共受益所有权。

France
法国

2017 saw France secure its first *Convention judiciaire d'intérêt public* ("CJIP")—the DPA-like mechanism that was introduced to French law in 2016 by *Loi Sapin II*—in a €300 million settlement with HSBC Private Bank Suisse SA. Although the charges underlying the settlement were not bribery-related, the HSBC CJIP likely signals the introduction of high-value settlements in future French anti-corruption enforcement matters. French authorities also secured the conviction of Teodoro Nguema Obiang Mangue, the son of the President of Equatorial Guinea (and himself the country's former Vice President), who was alleged to have embezzled more than €150 million from the public treasury. He was fined €30 million, received a suspended three-year prison sentence, and had his assets in France confiscated.

2017 年法国与 HSBC Private Bank Suisse SA 达成了首份《公共利益司法协约》（*Convention judiciaire d'intérêt public*，"CJIP"），和解金额高达 3 亿欧元，CJIP 是 *Loi Sapin II*（反腐败法）于 2016 年引入法国法律的类似于暂缓起诉协议的机制。虽然前述和解所基于的指控与贿赂无关，但是 HSBC 的这份 CJIP 可能预示着法国在未来的反腐败执法案件中将引入大额和解。同时，法国权力机关成功对赤道几内亚总统之子（亦为该国前副总统）Teodoro Nguema Obiang Mangue 定罪，其被控盗用超过 1.5 亿欧元公款。Teodoro Nguema Obiang Mangue 被判缴纳 3000 万欧元罚金，并被判处三年缓刑，且其在法国的个人资产被没收。

France's *Agence française anticorruption* ("AFA") commenced operations in 2017. The AFA's responsibilities include, among others, publishing recommendations to help private and public entities prevent and detect corruption, and overseeing the implementation of the mandatory anti-corruption compliance program requirements introduced by Article 17 of *Loi Sapin II.* Those requirements include a Code of Conduct; systems to collect and respond to whistleblower reports; risk assessments; risk-based due diligence procedures for clients, suppliers, and intermediaries; accounting controls; training; disciplinary procedures; and measures to track the implementation of the foregoing measures.
法国反腐局（"AFA"）于 2017 年开始运作。AFA 的职责包括但不限于发布建议帮助私营和公共实体预防及发现腐败，以及监督 *Loi Sapin II* 第 17 条引入的关于反腐败合规计划强制要求的落实。该等要求包括行为准则；收集以及响应举报的制度；风险评估；针对客户、供应商和中介机构的风险尽职调查程序；会计控制；培训；纪律程序；和追踪前述各项之落实的措施。

In December 2017, the AFA published recommendations for the implementation of an effective compliance program. Although the AFA has indicated on its website that it does not wish to dictate the specific methods through which companies achieve their compliance objectives, the recommendations will undoubtedly inform the measures that companies subject to Article 17 of *Loi Sapin II* put in place to meet its requirements. The recommendations are largely consistent with OECD best practices and the guidance that has emerged relating to the FCPA and UK Bribery Act; indeed, the AFA has indicated on its website that it sought to integrate into its recommendations the requirements of international anti-bribery legislation to ensure that French standards are consistent with international best practices. Accordingly, companies that have already implemented compliance programs consistent with the guidance relating to the FCPA and/or the UK Bribery Act and are subject to the Article 17 compliance program requirements in France will likely be able to retain the core elements of their compliance programs, although additional measures may be required to meet some of the prescriptive requirements set forth in *Loi Sapin II*.
2017 年 12 月，AFA 就有效合规计划的执行发布了相关建议。虽然 AFA 已经在其网站表示其无意强行规定公司实现其合规目标的具体方法，但是该等建议无疑提供了指导措施，即受限于 *Loi Sapin II* 第 17 条的公司可通过采取该等措施来满足其要求。前述建议在很大程度上符合 OECD 最佳实践做法以及与 FCPA 及英国反贿赂法相关的指南；的确，AFA 已在其网站上表示其寻求在其建议中纳入国际反贿赂法律的要求，以确保法国适用的标准与国际最佳实践做法一致。因此，对于已执行符合关于 FCPA 和/或英国反贿赂法之指南的合规计划且受限于法国第 17 条合规计划要求的公司，其很可能保持其合规计划的核心元素，但是可能需要采取额外措施以满足 *Loi Sapin II* 载明的某些规范要求。

The AFA has reportedly commenced its compliance program reviews for a small number of companies subject to the Article 17 requirements, beginning with off-site document reviews, which are expected to be followed by on-site audits. The reviews are mandatory for French

companies—including French subsidiaries of multinational companies—that meet the Article 17 thresholds (*i.e.*, those with 500 or more employees and annual turnover of at least €100 million). In addition to incentivizing large French companies to bolster their compliance programs, the AFA's review work may serve as a source of referrals leading to increased French enforcement actions, as the AFA has an obligation to refer to French prosecutors violations that are brought to its attention.
据称，AFA 已经开始针对一小部分受限于第 17 条要求的公司开展合规计划审查，该等审查开始于非现场文件审核，预计紧接着的就是现场审计。对于达到第 17 条门槛要求（即，员工人数达到 500 人或以上且年营业额至少达到 1 亿欧元）的法国公司——包括跨国公司在法国的子公司，前述审查为强制性。由于 AFA 有义务将其发现的违法行为通报法国检察机关，因此，除了鼓励大型法国公司加强合规计划外，AFA 的审查工作还可能起到案件来源的作用，导致法国执法行动的增加。

Other European Enforcement Developments
欧洲其他执法发展

There were several other notable European enforcement developments in 2017.
2017 年欧洲执法发展还包括其他几起备受瞩目的事件。

As discussed above, the **Swedish** and **Dutch** authorities took part in a $965 million coordinated global settlement with Telia to resolve allegations that improper payments were made to a government official in Uzbekistan in connection with Telia's operation in the Uzbek telecom market. Swedish prosecutors also brought related charges against three former Telia executives.
如上所述，**瑞典**和**荷兰**的权力机关以及国际上其他权力机关展开合作，与 Telia 达成金额为 9.65 亿美元的和解，以解决关于 Telia 就其在乌兹别克电信市场的运营向乌兹别克斯坦一名政府官员进行不当付款的指控。瑞典检察机关亦针对 Telia 的三名前高官提起相关指控。

In **Switzerland**, Geneva-based oil and gas company Addax Petroleum entered into a $32 million settlement with Geneva prosecutors to resolve a criminal investigation into allegations of corrupt payments in Nigeria.
在**瑞士**，位于日内瓦的油气公司 Addax Petroleum 与日内瓦检察机关达成了一项 3200 万美元的和解，以解决一项指控其在尼日利亚进行腐败付款的刑事调查。

In **Portugal**, prosecutors brought charges against four former TAP Airlines employees in connection with allegations that they laundered funds procured through a false invoicing arrangement with Angolan air transport provider SonAir and an intermediary. Money laundering charges were also filed against three lawyers accused of providing assistance with the scheme.
在**葡萄牙**，检察机关针对 TAP Airlines 的四名前雇员提起控告，指控其通过与安哥拉航空运输提供商 SonAir 及一个中介机构的虚假开票安排进行洗钱。同时被控洗钱的还有据称就此阴谋提供协助的三名律师。

European aerospace company Airbus SE is the target of ongoing corruption and fraud investigations by the SFO in the **UK**, the *Parquet National Financier* in **France** and authorities in **Germany** and **Austria**. In late 2017, multiple press reports indicated that Airbus's chief executive had written to employees to warn them to expect "significant penalties" as a result of the investigations. The SFO inquiry reportedly was launched after Airbus admitted to having failed to notify export credit authorities about the use of third party consultants in certain

transactions, which highlights the potential role that export credit agencies can play in anti-corruption enforcement
欧洲航空航天公司空中客车集团（“空客”）是**英国** SFO、**法国**国家经济财政检察院以及**德国**和**奥地利**权力机关持续反腐败和反欺诈调查的目标。2017 年底，根据多家新闻媒体的报道，空客首席执行官致函员工提醒称，预计会因调查遭受“重大处罚”。据报道，在空客承认未向出口信用权力机关报告其在某些交易中使用第三方顾问后，SFO 启动了调查，这显示了出口信用机关在反腐败执法中可能扮演的角色。

Also in **Germany**, Thyssenkrupp AG subsidiary Atlas Elektronik entered into a €48 million (~$58.7 million) settlement with the Bremen Public Prosecution Office related to allegations that it made improper payments through intermediaries to win contracts in Greece and Peru.
同时，在**德国**，蒂森克虏伯的子公司 Atlas Elektronik 就关于其通过中介机构进行不当付款以获得在希腊和秘鲁的合同的指控，与不莱梅公共检察办公室达成了 4800 万欧元（约 5870 万美元）的和解。

Ongoing domestic and foreign bribery investigations against both individuals and entities have been reported in various other jurisdictions in Europe, some of which are expected to lead to resolutions in 2018.
欧洲其他各辖区也报告了国内外持续针对个人和实体的反贿赂调查，其中一些调查预计在 2018 年得以解决。

2. Privilege Developments
保密特权发展

Europe
欧洲

As government enforcement and corporate investigations have become more prevalent in Europe, differences in the scope (and regulators' views) of applicable legal privileges in various countries have come into focus. In the **UK**, the potential scope of legal privileges in the context of corporate investigations was a matter of significant judicial scrutiny in 2017, which will continue through this year. In other jurisdictions, new questions are being raised concerning the scope of privilege in the context of anti-corruption investigations and enforcement actions.
随着政府执法和公司调查在欧洲变得越来越普遍，各国所适用的法律保密特权范围（以及监管机构看法）的差异也开始受到关注。在**英国**，公司调查背景下法律保密特权的潜在范围是 2017 年司法审查的一个要点，今年也将继续保持这种态势。在其他辖区，关于反腐败调查和执法行动背景下的保密特权范围，正产生新的问题。

In the **UK**, SFO representatives have moved away from public statements suggesting that privilege waivers will be required to obtain cooperation credit, a posture that had previously generated controversy. It remains apparent, however, that companies seeking to cooperate with the SFO in order to secure a DPA will need to develop strategies to convey the substance of their investigation findings in a manner that is acceptable to the SFO. Companies will often have to weigh that imperative against the risk of being found to have waived the privilege for purposes of litigation in other jurisdictions; for example, although a selective waiver concept is well-established in English law, U.S. federal courts are divided on whether a disclosure can be made to the government without effecting a broader waiver of privilege with respect to civil litigants and other third parties. Based on the UK DPAs that have been entered into thus far, it

seems that different approaches to sharing materials may satisfy the SFO, depending on the circumstances of the case. For example, although the steps that Rolls-Royce took to obtain cooperation credit (which have been described by SFO representatives as "extraordinary") included voluntarily waiving privilege over interview memos, and even providing audio recordings of certain interviews, in the XYZ Ltd. matter, which was also resolved through a DPA, oral summaries of interviewee accounts were accepted by the SFO as part of the company's "full and genuine cooperation."
在**英国**，SFO 代表已经抛弃了曾引发争议的、暗示要获得合作从宽处理则必须放弃保密特权的公开声明。但是，依旧明显的事实是，寻求与 SFO 合作以获得暂缓起诉协议的公司将需要制定策略，从而以 SFO 接受的方式传达其调查结果的实质。公司需要时常斟酌前述要求，以避免被发现为了在其他辖区进行诉讼而放弃保密特权的风险；例如，虽然英国法已确立了选择性弃权概念，但是对于向政府进行披露可否不引发更大范围的关于民事诉讼当事人和其他第三方的放弃保密特权这一点上，美国各联邦法院仍有分歧。基于英国至今已达成的暂缓起诉协议，根据案件的具体情况，对于共享资料似乎有不同的方法让 SFO 感到满意。例如，虽然劳斯莱斯为获得合作从宽处理采取了包括自愿放弃对访谈备忘录的保密特权，甚至还包括提供特定访谈录音等措施（被 SFO 代表描述为"特别"），但是在亦通过暂缓起诉协议解决的 XYZ 公司案件中，SFO 接受了被访谈人叙述内容的口头总结作为公司"全面真诚合作"的一部分。

The SFO may be more likely to challenge privilege claims, however, in light of the recent decisions in *Re the RBS Rights Issue Litigation*, [2016] EWHC 3161 (Ch) ("RBS") and *Serious Fraud Office v. Eurasian Natural Resources Corporation Ltd.*, [2017] EWHC 1017 (QB) ("ENRC"), which have brought into focus certain potential limitations of English law privileges in the context of internal investigations. The *RBS* case, for example, confirmed the position that the legal advice privilege does not apply to interviews of employees who are not specifically authorised to seek and receive legal advice on behalf of the company, a narrower standard than exists under U.S. law. In 2017, the *ENRC* decision (which is currently on appeal) brought into question the status of the litigation privilege, suggesting that it will not necessarily apply in the context of a criminal *investigation* because not every investigation leads to criminal *prosecution*.
但是，根据最近就 *Re the RBS Rights Issue Litigation*, [2016] EWHC 3161 (Ch) ("RBS") 和*英国严重欺诈局 v. Eurasian Natural Resources Corporation Ltd.*, [2017] EWHC 1017 (QB)案件作出的决定，SFO 似乎更可能质疑保密特权主张，前述两个案件使得内部调查背景下英格兰法保密特权的一些潜在限制受到关注。例如，RBS 案件确认了一个原则，即法律咨询保密特权不适用于对未明确获准代表公司寻求和接受法律咨询的员工的访谈，这比美国法下现行标准的范围更窄。2017 年，关于 ENRC 的决定（目前正在上诉过程中）讨论了诉讼保密特权的法律地位，暗示其在刑事*调查*背景下不一定适用，原因是并非每一起调查都会导致刑事*指控*。

In **Germany**, the Munich Public Prosecutor's office raided a local office of Jones Day, the law firm that had conducted an investigation into allegations that Volkswagen equipped diesel vehicles with devices designed to bypass emissions tests. Jones Day and Volkswagen filed a complaint with the German Constitutional Court and obtained a preliminary injunction barring the prosecutors from using the documents while the Court considers a challenge to an earlier decision allowing prosecutors to review the documents. The final decision of the German Constitutional Court is expected to clarify the status of the attorney-client privilege in corporate investigations in Germany.
在**德国**，慕尼黑公共检察官办公室突然搜查了众达律师事务所在当地的一个办公室，该律师事务所就关于大众在柴油车上安装作弊设备控制尾气排放的指控开展调查。众达律师事务所与大众向德国宪法法院提起了诉讼，并获得临时禁令禁止检察官使用文件，同时法院考虑收回之前允许检

察官审核文件的决定。预计德国宪法法院的最终决定将阐明德国的公司调查中律师客户保密特权的法律地位。

In **France**, the AFA has issued guidance indicating that entities subject to AFA oversight may not resist disclosure to the AFA based on *secret professionel*, France's version of the attorney-client privilege. In light of the AFA's broad powers to request documents relevant to its compliance program oversight responsibilities, multinational organizations with practices of conducting privileged risk assessments or internal investigations may wish to consider how related documents are created and maintained with respect to any French affiliates subject to AFA oversight.
在**法国**， AFA 发布了一项指南，表明受 AFA 监管的实体不得基于法国版本的律师-客户保密特权规定 *secret professionel* 拒绝向 AFA 进行披露。鉴于 AFA 拥有广泛的权利要求提供与其合规计划监管职责相关的文件，对于开展有保密特权的风险评估或内部调查的跨国组织，其可能希望考虑如何就受 AFA 监管的任何法国关联方创建和维持相关文件。

Africa
非洲

In October 2017, **South Africa**'s Supreme Court of Appeal upheld a High Court ruling to reinstate 783 charges of corruption, fraud, racketeering and money laundering against President Jacob Zuma, which had been set aside by the National Prosecuting Authority eight years earlier. In December 2017, the High Court ordered President Zuma to open an inquiry into influence peddling allegations relating to his relationship with the Gupta family. As detailed in a 350-page report compiled by South Africa's former Public Protector, the Guptas have been accused of exploiting their relationship with President Zuma to influence ministerial and other government appointments and, in turn, the award of state contracts to businesses owned by the Guptas. Meanwhile, media reports in late 2017 indicated that U.S. and UK authorities had opened probes into potential local ties to the Guptas, including the potential handling of funds by U.S. and UK banks. Several professional services firms and corporations also have become ensnared in investigations relating to dealings with the Gupta family.
2017 年 10 月，**南非**最高上诉法院支持了高等法院的一项裁决，重启针对 Jacob Zuma 总统的关于腐败、欺诈、敲诈勒索和洗钱的 783 项指控，该等指控在八年前被国家检察署搁置。2017 年 12 月，高等法院命令 Zuma 总统就涉及其和 Gupta 家族间关系的以权谋私指控启动调查。正如南非前公共利益保护人编制的一份 350 页的报告所详述，Guptas 被控利用其与 Zuma 总统的关系影响大臣及其他政府职位的任命，并影响向 Guptas 拥有的企业授予国家合同。同时，2017 年底的媒体报道表明美英权力机关已经开始调查当地可能与 Guptas 存在关联的各方，包括调查美国和英国的银行可能为其处理资金的问题。数个专业服务事务所和公司也陷入了与 Gupta 家族交易相关的调查中。

In **Nigeria**, fighting corruption remained a priority for President Buhari, who campaigned on a promise to wage a "war on corruption." The Nigerian Senate passed several bills in 2017 aimed at enhancing the country's anti-corruption enforcement efforts, including a witness protection bill, a whistleblower protection bill, and a mutual legal assistance bill intended to enhance collaboration between Nigeria and other countries in tackling corruption and money laundering. In addition, steps were taken to advance the establishment of dedicated anti-corruption courts to reduce delays in the resolution of corruption and other financial crime cases.
在**尼日利亚**，Buhari 总统的重点工作之一仍是打击腐败，其竞选时曾承诺发动"打击腐败之战"。尼日利亚参议院在 2017 年通过了数项旨在加强国家反腐败执法的议案，包括一项证人保护议

案，一项举报人保护议案，以及一项旨在巩固尼日利亚与其他国家在打击腐败和洗钱活动中的合作的法律互助议案。此外，已采取措施推进反腐败专门法院的建设，从而减少在解决腐败及其他金融犯罪案件方面的耽搁。

Asia
亚洲

In **China**, the government's anti-corruption campaign continued to ensnare officials through the 19th Party Congress in November, where Xi Jinping reiterated and expanded upon the theme that corruption remains the greatest threat to the Party's survival. The government announced the creation of a new National Supervision Commission to consolidate supervision and enforcement powers against public servants (including detention, investigation, and interrogation powers) into a single anti-corruption agency. China is also expected to pass a National Supervision Law in early 2018. The amended Anti-Unfair Competition Law, which took effect on January 1, 2018, expands the scope of bribery-related offenses (by defining broadly the categories of entities and individuals who may be recipients of bribes), increases penalties, clarifies vicarious liability, and provides specific monetary penalties for obstructing an investigation. In the life sciences sector, new regulations regulating the "two invoice" distribution system and medical representative registration have created new compliance challenges and risks.
在**中国**，政府在 11 月根据十九大继续针对官员开展反腐败斗争，习近平主席仍重申腐败仍是党面临的最大威胁并在该主题基础上进行了扩展。政府宣布组建全新的国家监察委员会，从而将针对公职人员的监督和执法权力（包括扣押、调查和讯问权力）合并归入一个单独的反腐败机构。同时，预计中国会在 2018 年初通过一部国家监察法。2018 年 1 月 1 日生效的修订后的《反不正当竞争法》扩大了贿赂相关犯罪的范围（通过广泛定义可能作为受贿方的单位和个人的类别），加重了处罚，阐明了替代责任，并就阻碍调查规定了具体的金钱处罚。在生命科学领域，关于"两票制"以及医药代表登记备案的新法规创造了新的合规挑战和风险。

In **Korea**, anti-corruption investigations felled the country's president and threatened senior executives at several large corporations. In addition, the government slightly revised the Improper Solicitation and Graft Act, which first went into effect in fall 2016, to change the limits on certain gifts and condolence money (some limits increased while others were lowered).
在**韩国**，反腐败调查击倒了该国的总统并对几家大型公司的高级管理层产生威胁。此外，政府略微修订了 2016 年秋首次生效的《禁止不正当请托与收受财物法》，以修改特定礼物和慰问金的限额（某些限额有所提高，而某些则有所降低）。

In **Vietnam**, the government continued a significant corruption crackdown movement in 2017, particularly targeting individuals in the natural resource and financial services sectors. The government recently amended its Penal Code to criminalize private-sector bribery and is debating revisions to tighten the Law on Anti-Corruption.
在**越南**，政府在 2017 年继续大量开展反腐败斗争，尤其是针对自然资源和金融服务行业的个人。政府近期修订了其《刑法典》以对私营行业的贿赂行为进行定罪处罚，并且正在讨论作出相关修改以收紧反腐败法。

In **Indonesia**, the Corruption Eradication Commission for the first time charged a corporation in a corruption case after a Supreme Court ruling in 2016 allowing law enforcement agencies to name a company as a suspect in in a criminal case involving corruption.

在**印度尼西亚**，在最高法院于 2016 年作出裁决允许执法机关在涉及腐败的刑事案件中将公司列为指控对象后，肃贪委员会首次在一起腐败案件中起诉了一家公司。

Governments in **India**, **Thailand**, and **Malaysia** released official guidance and standards on how companies should implement anti-bribery controls.
印度、**泰国**和**马来西亚**的政府发布了关于公司如何实施反贿赂控制措施的官方指南和标准。

Latin America
拉丁美洲

Latin America remained a focal point of U.S. enforcement efforts in 2017, with multiple U.S. enforcement actions involving conduct in the region. Domestic enforcement also was active, as several Latin American countries pursued investigations into dealings with Odebrecht (including in Ecuador, Colombia, Chile, Peru, Panama, and Argentina), among other matters. In addition, several countries have taken steps to bolster their anti-corruption laws. Below we discuss a selection of key developments in the region.
拉丁美洲仍是美国 2017 年执法行动重点关注区域的之一，美国多起执法活动均牵涉在该区域实施的行为。国内执法同样活跃，拉丁美洲的多个国家对 Odebrecht 的相关交易（包括在厄瓜多尔、哥伦比亚、智利、秘鲁、巴拿马和阿根廷发生的交易）等案件展开调查。此外，多个国家已采取措施推进其反腐败法律的发展。以下我们将就精选的该区域关键发展情况进行讨论。

Public corruption cases remained prominent in **Argentina** in 2017, with multiple senior politicians and politically connected individuals imprisoned and new charges being brought on a regular basis. The circumstances giving rise to these cases are varied, including allegations of a $60 million money laundering scheme known as the *ruta del dinero K* (which implicates two former presidents), allegations that the country's former planning minister diverted over $10 million in public funds from a coal mine project, and allegations that former senior cabinet members diverted millions of dollars in funds intended for use by municipalities to improve their waste management programs. Other matters have a significant international dimension, including an investigation into the dealings of Odebrecht, which admitted in its settlement with the U.S., Brazilian, and Swiss authorities to paying $35 million in bribes to Argentine officials between 2007 and 2014, and several matters stemming from the Panama Papers.
2017 年**阿根廷**的公共腐败案件仍相当突出，多名高层政客和政治相关人员被判处监禁，且经常提起新的指控。引发这些案件的情况各不相同，包括被称为"*ruta del dinero K*"（牵连两位前总统）的涉及 6000 万美元洗钱阴谋的指控、关于国家前规划部长从一个煤矿项目挪用超过 1000 万美元公共资金的指控，以及关于前内阁高级成员挪用市政当局拟用于改进其废弃物处理项目的数百万美元资金的指控。其他案件牵涉大量国际层面，包括对 Odebrecht 相关交易的调查，Odebrecht 在其与美国、巴西和瑞士权力机关的和解中承认其在 2007 年至 2014 年间向阿根廷官员支付 3500 万美元贿款，以及对巴拿马文件披露的几个案件的调查。

In November 2017, the Congress passed an expansive new anti-corruption law, which subjects corporations to liability when corrupt activities, such as bribery or influence peddling, are undertaken in their name or for their benefit. The new law provides that companies may avoid liability when they have adequate anti-corruption controls in place, promptly disclose to authorities the illicit conduct, and return any benefit obtained through the improper conduct.
2017 年 11 月，国会通过一项庞大的新的反腐败法，其规定，如果贿赂或权利贩卖等腐败活动以公司名义或为公司利益开展，则公司需承担相应责任。新法规定，如果公司建立充分的反腐败控

制措施，及时向权力机关披露违法行为并归还通过不当行为获得的任何利益，则可以免去公司的责任。

In July 2017, **Mexico's** *Ley General de Responsabilidades Administrativas* (General Law of Administrative Liabilities, or "GLAL") entered into effect. The law forms an integral part of the new legal framework established by the 2016 National Anti-Corruption System (*Sistema Nacional Anti-Corrupción*, or "SNA") to combat private and public sector corruption by coordinating and developing anti-corruption enforcement efforts across all levels of the Mexican government. The GLAL establishes administrative offenses applicable to Mexican public officials, including bribery and influence peddling, and also provides for corporate liability. In addition to monetary fines, the potential sanctions for GLAL violations by a corporation include debarment from public procurement, suspension of activities in Mexico for up to three years, and forced dissolution. Like many other newer anti-corruption laws, the GLAL provides that companies can avoid liability or benefit from reduced penalties if they put into place an "integrity program" that includes certain prescribed elements. The GLAL also provides for cooperation credit where companies or individuals voluntarily disclose misconduct and cooperate with government investigations. The degree to which Mexico's new anti-corruption laws will be vigorously enforced remains to be seen.
2017 年 7 月，**墨西哥**的《行政管理责任总法》（"GLAL"）生效。该法构成 2016 年全国反腐败系统（"SNA"）建立的新法律框架的组成部分，该法律框架旨在通过协调并推进墨西哥政府各级反腐败执法活动来打击私营和公共部门的腐败。GLAL 确立了适用于墨西哥公职人员的行政犯罪，包括贿赂和权利贩卖，同时规定了公司责任。除了罚金以外，如果公司违反 GLAL，则受到的制裁还可能包括禁止公共采购，暂停在墨西哥的活动最多长达三年，以及强制解散。正如许多其他较新的反腐败法律一样，GLAL 规定，如果公司建立包含特定因素的"诚信制度"，则可以免除其责任或者减轻对其的处罚。GLAL 还规定，对于自愿披露不当行为且配合政府调查的公司或个人，可以从宽处理。至于墨西哥新的反腐败法律将以何等强度得到执行，仍有待观察。

The ongoing *Lava Jato* investigation continues to result in an array of high-profile individual prosecutions and leniency agreements between companies and **Brazilian** authorities. For example:
持续进行的 *Lava Jato* 调查不断引发一系列针对高层个人的指控并导致公司和**巴西**权力机关间达成宽待协议。例如：

- In January 2017, Rolls-Royce reached a $25 million settlement with the MPF as part of the coordinated settlement discussed above.
  2017 年 1 月，劳斯莱斯与巴西联邦检察署达成了 2500 万美元的和解，作为上文所述协作和解的一部分。

- In April 2017, the Supreme Court Justice overseeing the *Lava Jato* investigation authorized the investigation of eight government ministers, twenty-four senators, thirty-nine deputies in the lower house of congress, and three state governors.
  2017 年 4 月，监督 *Lava Jato* 调查的最高法院法官授权调查八名政府大臣、二十四名参议员，三十九名下议院副职人员以及三名州长。

- In July 2017, former President Luiz Inácio Lula da Silva was convicted of accepting bribes and sentenced to nine and a half years in prison. In January 2018, an appellate court upheld the conviction and voted to increase the sentence to 12 years.

2017 年 7 月，前总统 Luiz Inácio Lula da Silva 被判受贿罪成立并被处以九年半有期徒刑。2018 年 1 月，一家上诉法院支持该项定罪，并投票增加刑期至 12 年。

- *Lava Jato* prosecutors have continued to return funds recovered through leniency and collaboration agreements to Petrobras, which to date has received approximately $447 million in recovered funds.
  Lava Jato 检察官不断将通过宽待与合作协议追回的资金退还 Petrobras，其至今已收到大约 4.47 亿美元的追回资金。

In early 2018, Petrobras announced that it had agreed to pay $2.95 billion to settle a securities class action lawsuit filed in a federal court in New York by shareholders who alleged that they had lost money because of corruption at the company.
2018 年初，Petrobras 宣布其已经同意支付 29.5 亿美元和解股东在纽约一联邦法院提起的证券集体诉讼，这些股东称他们因为公司腐败而损失了金钱。

In another noteworthy settlement, J&F Investimentos, the controlling shareholder of the world's largest meatpacking company, JBS SA, agreed in May 2017 to pay a record 10.3 billion reais (~$3.2 billion) fine under a leniency agreement to resolve two separate corruption investigations by Brazilian authorities. J&F's owners, Joesley and Wesley Batista, admitted to paying 600 million reais in bribes to nearly 1,900 politicians and provided an audio tape purporting to record a conversation between Joesley Batista and Brazilian President Michel Temer. President Temer has since been charged with corruption, obstruction of justice, and racketeering based on the Batistas' testimony.
在另一起备受瞩目的和解中，世界最大肉类加工企业 JBS SA 的控股股东 J&F Investimentos 在 2017 年 5 月同意按照一份宽待协议支付创纪录的 103 亿雷亚尔（约 32 亿美元）罚款以解决巴西权力机关提起的两起独立腐败调查。J&F 的所有权人 Joesley 与 Wesley Batista 承认其向近 1,900 名政客支付 6 亿雷亚尔贿款且提供了据称记录 Joesley Batista 和巴西总统 Michel Temer 间一次对话的录音带。基于 Batistas 的证言，Temer 总统随即被指控腐败、阻碍司法以及敲诈勒索。

Enforcement by International Financial Institutions Remains Active
国际金融机构的执法活动仍然活跃

The World Bank's Integrity Vice Presidency ("INT") remains a prominent player in anti-corruption enforcement. In its annual update for the 2017 fiscal year, INT reported that it had sanctioned 60 entities and individuals (in nearly all cases imposing a period of debarment), honored 84 cross-debarments from other development banks, made 32 referrals to national enforcement authorities, and opened 51 new investigations into alleged fraud and corruption in World Bank-financed activities. As suggested by the high number of cross-debarments honored by the World Bank (up from 38 in the 2016 fiscal year), other international financial institutions have also increased their focus on rooting out fraud and corruption in development projects.
世界银行廉政局（"INT"）仍是反腐败执法的一个活跃主体。在其针对 2017 财年的年度更新中，INT 报告称，其制裁了 60 个实体和个人（几乎所有案件设定一定的禁止期），履行来自其他开发银行的 84 起交叉制裁，向国家执法机关提交 32 起违法行为，并就世界银行提供资金支持的活动中涉及的欺诈和腐败启动 51 件新的调查。正如世界银行履行的大量交叉制裁（2016 财年为 38 起）所暗示的，其他国际金融机构也将越来越多的焦点放在彻底根除开发项目中的欺诈和腐败上。

More Countries Considered the Introduction of DPA Regimes
越来越多的国家考虑引入暂缓起诉协议制度

As discussed above, the introduction of corporate settlement mechanisms in the UK and France led to high-value corporate settlements in both countries this year. Several other countries have begun to consider developing similar tools to incentivize cooperation with government investigations. In particular, the Australian government introduced a bill in December 2017 introducing DPAs to Australian law (together with a new "failure to prevent bribery" offense), the Canadian Government held a consultation, which closed in November 2017, to consider introducing a DPA regime, and Singapore's Minister for Home Affairs and Law announced in January 2018 that the government of Singapore is considering introducing DPAs in an upcoming round of amendments to the Criminal Procedure Code and Evidence Act.
如上所述，英国和法国引入公司和解机制导致两国 2017 年出现大额公司和解案件。其他几个国家已经开始考虑采取类似手段以激励对政府调查的配合。尤其值得注意的是，澳大利亚政府在 2017 年 12 月提出一项将暂缓起诉协议引入澳大利亚法律的议案（连同提出新的"未能阻止贿赂"罪），加拿大政府举行了一次旨在考虑引入暂缓起诉协议制度的商议，该商议于 2017 年 11 月结束，新加坡内政和法律部长于 2018 年 1 月宣布新加坡政府拟考虑在即将到来的对刑事诉讼法典和证据法的新一轮修订中推出暂缓起诉协议。

Global Trends
全球趋势

As we reported in a recent seminar, more companies are considering whether to implement the International Standards Organization's ISO 37001 Anti-Bribery Management System, which was issued in October 2016. ISO 37001 is a voluntary set of standards for corporate anti-bribery compliance, accompanied by voluntary independent third-party certification and periodic audits. The standard seeks to provide a single set of harmonized guidelines to allow companies and regulators to develop, improve, and monitor anti-bribery compliance systems. While it is not specific to any single anti-corruption legal regime, the standard is generally consistent with international regulatory guidance, including guidance issued by DOJ and the SEC. ISO certification does not provide a safe harbor against regulatory enforcement but is intended to be evidence that a certified company has taken meaningful steps toward effective compliance.
正如我们在最近的研讨会中所报告的，越来越多的公司开始考虑是否实施国际标准化组织 2016 年 10 月发布的 ISO 37001 反贿赂管理体系。ISO 37001 是一套自愿采纳的公司反贿赂合规标准，附带自愿实施的独立第三方认证和定期审核。该标准寻求提供一套单独的协调指南，以允许公司和监管机构制定、改进和监督反贿赂合规系统。虽然该标准并非针对任何单独的反腐败法律制度，但其总体上符合各种国际监管指南，包括美国司法部和美国证交会发布的指南。ISO 认证并不提供针对监管执法的安全港，但是其旨在证明经认证的公司已采取关于有效合规的有意义措施。

ISO 37001 received a boost in 2017 with the announcements by Microsoft and Wal-Mart that they would seek certification, and the announcement by French transportation systems company Alstom that it had been certified following an audit at multiple sites in Europe.
微软和沃尔玛在 2017 年宣布其将寻求 ISO 37001 认证，同年，法国交通运输系统公司 Alstom 宣布在其欧洲多个场所被审计后其已获得认证，这进一步推动了 ISO 37001 的发展。

What to look for in 2018:
展望 2018：

- *Will U.S. certifying organizations emerge?*
- *是否会出现美国认证组织？*

  - The market for U.S.-based certifying organizations for ISO 37001 has yet to mature, and thus far the large accounting firms, to which business organizations often turn to support controls assessments and audits, have not entered the market. We expect that until this market matures, many business organizations will continue to take a wait-and-see approach rather than seeking certification in 2018.
  - 位于美国的针对 ISO 37001 的认证组织市场尚待成熟，迄今为止，商业组织经常就控制措施评估和审计向其寻求支持的大型会计师事务所尚未进入市场。我们预期在市场成熟之前，许多商业组织仍将采取观望态度，而非在 2018 年寻求认证。

- *Will regulators give ISO 37001 certification any weight when assessing a corporate compliance program?*
- *监管机构在评估公司合规计划时是否会考虑 ISO 37001 认证？*

  - U.S. regulators have not yet made many statements about whether they view ISO 37001 as a meaningful compliance tool or if certification will be seen as evidence of an effective compliance program. We believe that DOJ and the SEC will continue to exercise their own independent assessments of the compliance programs of companies that are under investigation, and companies are well advised to continue to focus on DOJ and SEC guidance on effective compliance programs. In our view, companies would be well served by conducting a privileged compliance program assessment, focused on prevailing DOJ and SEC guidance (and other regulatory guidance, as applicable), before undertaking the certification process.
  - 对于是否将 ISO 37001 视为一种有意义的合规工具或者认证是否会被视为有效合规计划的证明，美国监管机构尚未作出多少声明。我们认为，美国司法部和美国证交会将继续就受调查之公司的合规计划执行其自己的独立评估标准，且我们建议公司继续关注美国司法部和美国证交会关于有效合规计划的指南。我们认为，在采取认证程序之前，公司通过有特权的合规计划评估并关注占主要地位的美国司法部和美国证交会指南（以及其他适用的监管指南），即可在相当大的程度上达到合规计划要求。

- *Will smaller companies and third-party representatives (including distributors) see ISO 37001 as a market differentiator and/or means of managing competing compliance efforts pushed out by business partners?*
- *小型企业和第三方代表（包括经销商）是否会将 ISO 37001 视为市场区分器和/或处理商业伙伴推出的竞争性合规措施的方法？*

  - Major multinationals in higher-risk industries increasingly focus on the compliance programs of their sales agents, distributors, regulatory consultants, lobbyists, customs brokers, and other government-facing representatives, often collecting compliance documentation as part of due diligence, pushing out anti-corruption

training, conducting compliance audits, and imposing other compliance measures on their highest-risk business partners. Representatives that work with many multinationals can find themselves on the receiving end of such efforts from multiple companies. We will be interested to see whether such representatives seek ISO certification, either because they view it as a competitive advantage to winning business with major multinationals or as a strategy for avoiding multiple, overlapping compliance efforts by business partners.

- 高风险行业的大型跨国公司越来越关注其销售代理、经销商、监管顾问、游说集团、海关代理及其他与政府打交道的代表的合规计划，经常收集合规文件作为尽职调查的一部分，推出反腐败培训，开展合规审核，以及对其最高风险的商业伙伴实施其他合规措施。与许多跨国公司合作的代表会发现他们是跨国公司合规努力的承受方。由于该等代表将 ISO 认证视为获得大型跨国公司业务的有利优势或者避免商业伙伴多重、重复合规努力的策略，我们有兴趣观察该等代表是否会寻求 ISO 认证。

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