COVINGTON

2018 Year in Review: Top Anti-Corruption Enforcement Trends and Developments
2018 年回顾：主要反腐败执法趋势和动态

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Anti-Corruption 反腐败

It was business as usual for FCPA enforcement in 2018. The U.S. Department of Justice ("DOJ") and the U.S. Securities and Exchange Commission ("SEC") collected a total of $1 billion from seventeen corporate defendants, including through their share of two high-value, multi-jurisdictional enforcement actions. DOJ also announced thirteen new FCPA prosecutions against individuals and used the money laundering and wire fraud statutes to pursue cases against foreign officials and others implicated in cross-border corruption schemes. The SEC, for its part, commenced FCPA enforcement actions against three individuals. Though the year did not see a meaningful change in the level of enforcement activity, DOJ announced several refinements to its FCPA enforcement policies, which seem unlikely to result in a substantial shift in practice, but helped to clarify the Department's position on various issues. As for the SEC, the agency continued to aggressively pursue actions under the books and records and internal accounting controls provisions, including against foreign state-owned companies that were themselves the victims of corruption schemes.

2018 年，FCPA 执法如常进行。美国司法部（下称"司法部"）和美国证券交易委员会（下称"证交会"）向十七个公司被告人收取了总计 10 亿美元的罚金，包括通过参与两项高价值、跨辖区执法行动所收取的份额。司法部还宣布了针对个人的十三项新的 FCPA 指控，并运用反洗钱和电信欺诈法律对外国官员及其他参与跨境腐败密谋的人提起诉讼。证交会则对三名个人启动了反海外腐败执法行动。尽管去年的执法行动并未表明执法活跃度有很大变化，但司法部宣布对其 FCPA 执法政策作出了几项细化，这些细化似乎不太可能导致实践中会有很大的变化，但有助于澄清司法部对于各项问题的立场。至于证交会，该机构继续根据账簿和记录和内部财务控制规定积极执法，执法对象包括本身是腐败密谋受害者的外国国有公司。

Meanwhile, anti-corruption enforcement efforts continued to expand and mature across Europe, Africa, Asia, and Latin America, underscoring the continued importance of developing and maintaining a robust and tailored anti-corruption compliance program to meet the expectations of regulators around the world.

同时，反腐败执法活动继续在欧洲、非洲、亚洲和拉丁美洲扩大范围且日臻成熟，这表明，制订和保有满足世界各地监管机构期望的健全和有针对性的反腐败合规制度仍然很重要。

1. A year of refinement to DOJ's FCPA enforcement policies.
司法部 FCPA 执法政策细化的一年。

Over the course of 2018, DOJ announced a number of changes to its enforcement policies and practices. As discussed in more detail below, these changes included extending the Corporate Enforcement Policy to acquiring companies that uncover wrongdoing in connection with mergers and acquisitions; formalizing the Department's practice of coordinating with other U.S. and foreign enforcement authorities to avoid the "piling on" of penalties; issuing updated guidance on corporate monitors; and revising DOJ's policy on cooperation in investigations of corporate wrongdoing.

在 2018 年里，司法部宣布了对其执法政策和实践所作的若干变动。如下文详述，那些变化包括使公司执法政策延伸适用于发现与并购相关的不当行为的收购方公司；规范司法部与美国其他执法部门及外国执法部门协调的实践，以避免"叠加"处罚；发布关于公司监察员的更新指引；以及修订司法部关于在公司不当行为调查中合作的政策。

Rather than a signaling a dramatic shift in Department philosophy or practice, most of these policy refinements reflect a codification of what we have seen in practice in recent years and may reflect a desire to take into account the experience of the Department's prosecutors and realities of FCPA investigations, feedback from the Defense Bar, and an intention by the Department to ensure its resources are being deployed in a manner consistent with broader Department priorities. As such, we do not expect that these refinements will result in any dramatic shift in enforcement priorities or practice, but this will be an area we continue to watch.

这些政策细化大多并未反映司法部理念或实践上的重大变化，而是反映了我们近些年在实践中所看到情况的成文化，也可能反映了将司法部检察官的经验和 FCPA 调查的现实纳入考虑的愿望、来自辩护律师协会的反馈以及司法部确保按照其更大范围的工作重点部署其资源的意图。因此，我们认为这些细化不会导致执法重点或实践上的重大变化，但这会是我们继续关注的一个方面。

Clarifications regarding the application of the Corporate Enforcement Policy
关于企业执法政策适用的说明

As we have noted in past publications, the Corporate Enforcement Policy, which was adopted by DOJ in 2017 and incorporated into the United States Attorneys' Manual (now known as the "Justice Manual"), establishes the presumption that, absent "aggravating circumstances," a company will be eligible for a declination where it voluntarily discloses misconduct, fully cooperates with DOJ, timely and appropriately remediates, and agrees to pay disgorgement, forfeiture, or restitution. Alternatively, a company that meets those conditions but otherwise does not qualify for a declination may receive a 50% reduction off the low end of the U.S. Sentencing Guidelines fine range.

如我们在过去的刊物中指出的那样，于 2017 年被司法部发布并纳入《美国检察官手册》（现称为"法官手册"）的企业执法政策建立了以下假设：在非"加重情形"的情况下，如果一家公司主动披露不当行为、充分配合司法部、及时和适当补救并且同意缴出非法所得、没收或赔偿处理，则将有资格获得不予起诉决定。该政策也允许司法部建议在某些案件中（除含累犯的案件），让不具有获得不予起诉函资格但却自愿披露不当行为、完全配合调查、并采取补救措施的公司获得《美国量刑指南》罚款范围下限 50%的减免。 该政策还明确，在公司有资格获得 50%减免刑罚的案件中，如果公司已经在结案时实施了有效的合规计划，司法部"通常将不会要求任命一位监察员。"

DOJ did not make any significant revisions to the Corporate Enforcement Policy in 2018, but did expand the scope of its application in several respects. In March 2018, DOJ officials announced that the Criminal Division would use the policy as guidance outside the FCPA context. In July 2018, Deputy Assistant Attorney General Matthew Miner announced that DOJ intends to apply the policy to acquiring companies that uncover wrongdoing in connection with mergers and acquisitions so that "law-abiding companies with robust compliance programs" are not discouraged from acquiring non-compliant companies. While not game-changing, this announcement clarified that acquiring entities may receive the benefit of disclosure even in situations where the selling or acquired company was aware of the improper conduct prior to the transaction. DOJ further clarified in September 2018 that these principles will apply in the merger and acquisition context when other types of wrongdoing—not just FCPA violations—are uncovered.

2018 年，司法部未对企业执法政策作出任何重大修订，但的确在几个方面扩大了其适用范围。2018 年 3 月，司法部官员宣布，司法部刑事司将把该政策用在 FCPA 情境外的指导。2018 年 7 月，助理副司法部长 Matthew Miner 也宣布司法部拟对发现与并购相关的不当行为的收购方公司适用该政策，以便"具备有效合规制度的守法公司"不会对收购不合规的公司产生犹豫。尽管并未带来巨大的变化，但该声明澄清，即使是在出售方或被收购公司于交易前已知晓不当行为的情况下，收购方实体仍可获得披露所发现的不当行为的好处。司法部在 2018 年 9 月进一步澄清，这些原则将适用于在并购情形下所发现的其他类型的不当行为（不仅仅是 FCPA 违法行为）。

DOJ officials have explained that the purpose of the Corporate Enforcement Policy is to "foster[] a climate in which companies are fairly and predictably treated when they report misconduct" in order to "increase self-reporting and individual accountability." As we noted last year, however, the additional clarity and predictability that the policy is intended to achieve is offset in part by the fact that prosecutors retain considerable discretion in the application of the policy. In 2018, we began to see the policy applied in practice, but questions remain, fueled in part by the discretion embodied in the policy's voluntary self-disclosure and remediation standards, as well as the "aggravating circumstances" exception, which allows prosecutors to depart from the presumption of a declination and resolve matters through a non-prosecution agreement ("NPA"), deferred prosecution agreement ("DPA"), guilty plea, or even indictment.

司法部官员解释说，企业执法政策的目的是"营造一个以公平和可预测的方式对待报告不当行为的公司的环境"，从而" 增加自行报告和个人问责制。"但是，如我们在去年指出的那样，该政策更多的澄清和可预测性被以下事实部分抵消：检察官在运用该政策时保留了相当大的自由裁量权。2018 年，我们开始发现该政策在实践中的运用，但仍然存疑，部分原因是体现在该政策的自行披露和补救标准以及"加重情节"例外中的自由裁量权， 从而允许检察官放弃不起诉函的假设，通过不起诉协议（下称"NPA"）、暂缓起诉协议（下称"DPA"）、认罪请求或甚至诉状来解决案件。

For example, under the Corporate Enforcement Policy, a voluntary self-disclosure must occur "prior to an imminent threat of disclosure or government investigation" and "within a reasonably prompt time after becoming aware of the offense" in order to qualify for a declination. DOJ officials have noted that this means "companies should make their initial disclosures sooner rather than later," but exactly what these standards mean in practice will likely vary in each investigation. For example, the Dun & Bradstreet Corporation ("D&B") received a declination under the policy last year, even though according to the company's settlement with the SEC, D&B self-reported to DOJ after police in China conducted a raid on D&B's subsidiary.

例如，在企业执法政策下，为了获得不予起诉函，公司主动自行披露不当行为必须发生"于紧迫的披露或政府调查风险出现之前"，以及"须在知悉罪行后的合理时间内尽快完成。"司法部官员指出，这意味着，"公司应当尽早进行其首次披露，"但实践中这些标准很可能在每个调查案件中而有所区分。例如，邓白氏公司（下称"邓白氏"）去年根据该政策获得了不起诉函，虽然根据公司与证交会的和解，邓白氏是在中国警方突击检查邓白氏子公司后才对司法部和证交会进行的自行报告。

As another example, to receive credit for "appropriate remediation," the policy requires "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*" (emphasis added), such as ubiquitous messaging platforms like WhatsApp and WeChat. Although DOJ has not formally expounded on its expectations in this regard, DOJ officials have indicated that, despite the strict language of the policy, DOJ does not necessarily expect companies to impose outright prohibitions on the use of such messaging applications. Instead, companies should take a "risk-based approach" and be able to explain to DOJ what steps they have taken with respect to use of messaging applications, and why. Whether this risk-based approach is accepted in practice by DOJ remains to be seen.

另举一个例子，要获得"适当补救"的宽大处理奖励，该政策要求"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并不适当保留业务记录或通讯的软件*（加了着重符）"，如像 WhatsApp 和微信这样的常见消息发送平台。尽管司法部未曾正式地详述其在这方面的预期，但司法部官员指出，尽管该政策措辞严格，司法部并不一定预期公司对该等消息发送应用软件的使用实施彻底的禁令。相反，公司应当采取"基于风险的方法"，且能够向司法部解释其对于消息发送应用软件的使用已采取什么措施以及为什么采取这些措施。这种基于风险的方法在实践中是否被司法部接受尚有待观察。

Finally, regarding the "aggravating circumstances" exception, two of 2018's enforcement actions suggest that the exception may be applied with flexibility. For example, the declination issued to Insurance Corporation of Barbados Limited suggests that a declination may be available to companies under the Corporate Enforcement Policy despite the "high-level involvement of corporate officers" if DOJ is "able to identify and charge the culpable individuals." Another declination issued last year included disgorgement to DOJ and the SEC in excess of $30 million, suggesting that declinations may be possible even where there may have been significant profit from the underlying conduct at issue.

最后，关于"加重情节"例外，2018 年的两项执法行动表明，该例外可灵活运用。例如，对 Insurance Corporation of Barbados Limited 出具的不起诉函表明，如果司法部"能够认定并指控有罪责的个人"，则可根据企业执法政策对公司提供不起诉函，哪怕"公司高管高度参与其中"。去年出具的另一份不起诉函包括对司法部和证交会缴纳超过 3000 万美元的非法所得，这表明，即使是相关争议行为可能会带来巨大利润的情况下，出具不起诉函也是有可能的。

Policy on Coordination of Corporate Resolution Penalties
关于协调公司结案处罚的政策

In May 2018, DOJ issued a formal policy, titled "Coordination of Corporate Resolution Penalties" (the "Anti-Piling On Policy"), which requires DOJ attorneys to be mindful of their ethical obligation not to unfairly extract additional penalties in parallel or joint investigations involving other U.S. or foreign enforcement authorities, and requires DOJ attorneys to coordinate with and consider the amount of fines, penalties, and/or forfeiture paid to other U.S. or foreign enforcement authorities that are seeking to resolve a case with a company for the same misconduct. Given the trend of coordinated, multi-jurisdiction enforcement actions we have seen in recent years, we do not see this policy as a significant shift in practice for FCPA settlements. But having DOJ's position in writing when negotiating parallel resolutions will be helpful to practitioners.

2018 年 5 月，司法部发布了一项政策，名为《公司结案处罚的协调》（下称"不叠加政策"），要求司法部检察官牢记自己的道德义务，不得在涉及其他美国或外国执法机构的并行或联合调查中不公平地施加额外处罚，并要求司法部检察官与因相同不当行为与一家公司解决案件的其他美国或外国执法机构协调，并将已支付上述机构的罚金、处罚和/或罚没款的金额考虑在内。鉴于近年来我们观察到的跨区域协调执法行动数量的增加，我们不认为该政策会在实践中对 FCPA 案件的和解产生重大转变。但是，司法部的立场能落实到书面上对于执业人员在进行平行和解谈判时是有帮助的。

After the Anti-Piling On Policy was issued, DOJ announced two coordinated, multi-jurisdiction enforcement actions (Petrobras and Société Générale), the latter being the first coordinated anti-corruption resolution between U.S. and French authorities. In both matters, U.S. enforcement authorities offset penalties imposed based on penalties paid to local enforcement authorities, with U.S. authorities collecting just 20% of the overall penalties in the Petrobras matter and 50% of the overall penalties in the Société Générale matter. In both cases, DOJ stated that it did not impose a monitor because, among other factors, each company would be subject to oversight by enforcement authorities in their home country.

在不叠加政策颁布后，司法部宣布了两项涉及巴西石油公司和法国兴业银行的协调、跨区域的执法行动，后者是美国与法国政府的首次协调反腐败结案。在这两个事项中，美国政府部门均基于支付给当地执法部门的罚金抵免了处罚，而美国政府在巴西石油公司案中仅收取了总罚金的 20%，而在法国兴业银行案中也仅收取了总罚金的 50%。在这两案中，司法部声明，其并未派驻监察员，主要原因是，两家公司都会受到其所在国执法部门的监控。

As in prior years, multi-jurisdiction coordination also was evidenced in acknowledgments by DOJ and the SEC in various enforcement actions of assistance from non-U.S. law enforcement authorities and police, including authorities in Switzerland, Spain, the UK, Brazil, Singapore, Malaysia, and several other countries. In 2018, the SEC and the FCPA Unit within DOJ also hosted a training for foreign law enforcement officials from 34 countries, suggesting continued cross-border collaboration and strengthening of law enforcement relationships.

如同往年一样，通过司法部和证交会在外国执法部门和警方（包括瑞士、西班牙、英国、巴西、新加坡、马来西亚和其他几个国家的政府部门）给予协助的各项执法行动中表示的感谢，跨区域协调举措也得到了应证。2018 年，证交会和司法部内部的 FCPA 部门还为来自 34 个国家的外国执法官员举行了培训，此举表明跨境协作还会继续，执法合作关系还会加强。

Updated DOJ guidance on corporate monitors
更新的司法部公司监察员指南

In October 2018, Assistant Attorney General Brian Benczkowski issued updated guidance on the selection of corporate monitors in criminal matters (the "Benczkowski Memo"). The Benczkowski Memo emphasizes the core principle from prior DOJ guidance that a monitor should be a remedial measure, and not punitive, and that prosecutors should weigh the potential benefits, as well as the cost and impact of a monitor on a company's operation. The Benczkowski Memo elaborates on these considerations, formalizing principles and procedural steps for the imposition and selection of corporate monitors, many of which have already been reflected in recent resolution papers. Notably, the Benczkowski Memo does not otherwise reference the criteria in last year's Deferred Prosecution Agreement with Panasonic Avionics Corp. ("PAC") that "[m]onitor selections shall be made in keeping with the Department's commitment to diversity and inclusion," although a footnote in the Memo indicates that "[a]ny submission or selection of a monitor candidate by either the Company or the Criminal Division should be made without unlawful discrimination against any person or class of persons."

在 2018 年 10 月，助理副司法部长 Brian Benczkowski 发布了关于刑事案件中公司监察员选择的更新指南（下称"Benczkowski 备忘录"）。Benczkowski 备忘录强调了之前司法部指南的核心原则：监察员应作为补救措施，而非惩罚措施，检察官应当权衡潜在利益，以及监察员对于一家公司运营的成本和影响。 Benczkowski 备忘录阐述了上述考虑，规范了关于公司监察员派驻和选择的原则和程序步骤，其中许多已反映在近期的结案文件中。值得注意的是，Benczkowski 备忘录并未引用在去年松下航空电子公司（下称"松下航空电子"）DPA 中的标准，即"监察员的选择应当与司法部的多元化和包容承诺一致。"不过，备忘录中有一个脚注表示，"该公司或刑事司提议或选择监察员候选人时不得对任何人或任何一类人有非法歧视。"

To evaluate the potential benefits of a monitorship, the Benczkowski Memo instructs prosecutors to consider the adequacy of a company's compliance program and internal controls, whether remedial improvements to those controls have been tested, and the pervasiveness or involvement by senior management in the misconduct. In this sense the memo does not break any new ground, as these factors have typically been part of any discussion regarding imposition of a monitor, and recent enforcement actions have expressly referenced some of these factors. For example, in the April 2018 PAC settlement—the only case from 2018 where a monitor was imposed—the DPA noted that the imposition of a monitor for two years was "necessary to prevent the reoccurrence of misconduct" because the company "to date has not fully implemented or tested its enhanced compliance program." In contrast, in the September 2018 Petrobras settlement, DOJ pointed to the extensive remedial measures taken by Petrobras as one of the factors considered in not imposing a monitor, in addition to the fact that Petrobras would be subject to post-resolution supervision by Brazilian authorities.

为了评估派驻监察员的潜在益处，Benczkowski 备忘录指示检察官考虑一家公司合规计划和内部控制措施的充分性、对这些控制措施的补救性改善是否得到检验、以及不当行为的普遍程度和高级管理层在不当行为中的参与。从这个意义说，Benczkowski 备忘录并无新的突破，因为在有关派驻监察员的讨论中通常都会涉及这些因素，且近期的执法行动也已经明确提到上述一些因素。例如，在 2018 年 4 月的松下航空电子和解（也是 2018 年有监察员派驻的唯一案件）中，DPA 指出，由于该公司"截至目前仍未充分执行或检验其改进的合规计划"，"有必要"在两年内派驻监察员"以防止不当行为再次发生。"对比之下，在 2018 年 9 月巴西石油公司案的和解中，司法部明确指出把巴西石油公司采取的广泛补救性措施作为作出不派驻监察员决定时考虑的因素之一，同时也指出巴西石油公司将受到巴西政府结案后监控的事实。

While we view DOJ's approach on *whether* to impose a monitorship as consistent with existing practice, the memo's commentary on the *scope* of monitorships is potentially significant. The memo instructs that the scope of monitorship "should be appropriately tailored to address the specific issues and concerns that created the need for the monitor," and requires that the monitorship's scope be explicitly addressed in the resolution papers. Although we have not yet seen how these scope instructions will be applied in practice, the Benczkowski Memo may support arguments to limit a monitorship to particular geographies, business units, operational areas, or compliance risks. Recent monitorships have tended not to include such explicit scope limitations.

虽然我们认为司法部决定是否派驻监察员的方法与现有实践一致，但该备忘录关于监察范围的评述有潜在的重要意义。该备忘录指出，监察范围"应当适当定制，以解决引起需要监察员的特定问题和担心，"并要求，监察范围应在结案文件中明确指出。尽管我们尚未发现这些范围指示会如何付诸实践，Benczkowski 备忘录可能佐证了将监察限于特定地理区域、业务单位、运营地区或合规风险的论点。近期的监察倾向于不包括这种明确的范围限制。但是我们将关注对范围的限制是否会随着 Benczkowski 备忘录的应用而越来越普及。

DOJ confirms the elimination of the Corporate Compliance Counsel position
司法部确认取消公司合规法律顾问职位

Also in October 2018, Assistant Attorney General Benczkowski announced that DOJ will no longer have a single, designated compliance counsel. However, instead of "[r]elying on a single person as the repository of all of [DOJ's] compliance expertise," DOJ will focus on (a) hiring attorneys who have experience developing and testing corporate compliance programs and (b) developing targeted compliance training programs for its prosecutors. .

2018 年 10 月，助理副司法部长 Brian Benczkowski 宣布，司法部将不再设立单一、指定的合规法律顾问。相反，与过去"依赖一个掌握所有[司法部]合规专长的人"不同，司法部今后将着重于(a)聘请具有制订和检验公司合规计划经验的检察官，和(b)为其检察官制订有针对的合规培训计划。

In his announcement, Benczkowski emphasized that prosecutors will continue to assess and take into account corporate compliance programs at the time of the conduct and at the time of resolution, which would be consistent with the focus on remediation and compliance in the Corporate Enforcement Policy and the Benczkowski Memo. However, by eliminating the Compliance Counsel position and shifting the compliance program assessment role fully to line prosecutors conducting the investigation, the Department may lose, in the short term at least, some of its ability to benchmark corporate compliance programs, and some of the perspectives that come from having a dedicated compliance counsel with extensive experience operating in the private sector. In any event, we do not expect this change in approach to result in DOJ's assessment of compliance programs being any less rigorous.

Benczkowski 在其声明中强调，检察官将继续评估和考虑行为发生时以及结案时的公司合规计划。这与公司执法政策中对补救和合规的关注以及 Benczkowski 备忘录是一致的。但是，通过取消合规法律顾问职位以及将合规计划评估任务全部转给进行调查的一线检察官，司法部可能会失去（至少在短期）对公司合规计划进行基准比较的部分能力，以及来自于具有丰富私营行业经验的专职合规法律顾问的一些视角。在任何情形下，我们都不认为这一方法上的变化会导致司法部对合规计划的评估会变得不再严厉。

Revisions to DOJ policy on cooperation in investigations of corporate wrongdoing
对关于公司不当行为的司法部政策的修订

In November 2018, DOJ announced changes to its policy on cooperation in investigations of corporate wrongdoing (previously set forth in the 2015 "Yates Memo," and subsequently incorporated into the Justice Manual). As with other policy changes from 2018, these changes do not represent a significant shift in policy or practice with respect to corporate criminal investigations, but they do help clarify in writing the scope of a company's cooperation requirements. For example, under the Yates Memo, companies were required to "identify *all individuals* involved in or responsible for the misconduct" (emphasis added) in order to receive cooperation credit. Under the new policy, companies only are required to identify individuals "*substantially* involved in or responsible for the misconduct" (emphasis added). Deputy Attorney General Rod Rosenstein explained that this change was made in response to concerns about the inefficiencies and delays of requiring companies to identify all employees involved in wrongdoing and was intended to clarify DOJ's view that companies should focus on individuals who played significant roles and authorized the misconduct. Although the exact scope of who is considered an individual "substantially involved in or responsible for the misconduct" remains to be seen (and likely will be very fact-specific), DOJ officials have suggested that "substantially involved" would include not only the obvious categories, such as senior leadership involved and other employees who were responsible for the misconduct, but also lower-level employees involved in carrying out a scheme.

2018 年 11 月，司法部宣布对其关于在公司不当行为调查中合作的政策作出的变更。如同 2018 年的其他政策变更一样，这些变更并不表示公司刑事调查相关的政策或实践有重大的转变，但它们的确有助于以书面方式澄清司法部关于合作期待的范围。例如，在自 2015 年施行的 Yates 备忘录下，企业被要求"确定参与不当行为或对不当行为负有责任的*所有个人*"（加了着重号）以便获得司法部的合作奖励。而在新政策下，企业仅被要求确定"实质上参与不当行为或对不当行为负有责任的"（加了着重号）个人。副司法部长 Rod Rosenstein 解释说，这一变更是对有关对公司确定所有参与不当行为的员工的要求不充分和不及时的担心作出的回应，旨在澄清司法部的下列观点：公司应当把关注点放在授权不当行为且在不当行为中起重要作用的个人。尽管谁被视为"实质上参与不当行为或对不当行为负有责任的"个人尚有待观察（且很有可能很大程度上取决于相关事实），司法部官员曾暗示，"实质上参与"不仅包括显而易见的几类人，如所涉及的高级领导人员及对不当行为负有责任的其他员工，还包括参与执行密谋的较低级别的员工。

We do not view this more limited focus on individuals who were "substantially involved in or responsible for" as stepping away from the Department's recent emphasis on individual accountability, nor do we see it as likely to materially change how companies will need to approach internal investigations to obtain cooperation credit.

我们不认为这一较有限的对"实质上参与不当行为或对不当行为负有责任的"个人的关注偏离了司法部近期对个人问责的侧重。我们也不认为这会在实质上改变公司获得合作奖励所需的应对内部调查的方法。

What to watch for in 2019:

2019 年值得关注的问题：

- Will DOJ provide greater clarity on what is considered a timely voluntary self-disclosure under the Corporate Enforcement Policy?

  司法部是否会就公司执法政策下什么被视为及时主动自行披露提供进一步说明？

- Will DOJ revise the Corporate Enforcement Policy's express requirement that companies "prohibit[] employees from using software that generates but does not appropriately retain business records or communications"? If not, will we see cases where companies receive full credit under the policy despite not implementing a complete prohibition on messaging applications?

  司法部是否会修订公司执法政策中明确要求公司应"禁止员工使用生成但并不适当保留业务记录或通讯的软件"的要求？如否，我们是否会看到这样的案例：有的公司尽管未实施关于消息发送应用程序的完全禁令，但仍根据政策获得充分宽大处理？

- Will DOJ limit the scope of corporate monitorships under the Benczkowski memo, and if so, in what ways?

  司法部是否会根据 Benczkowski 备忘录限制公司监察的范围以及如何限制？

- Will DOJ continue to defer to foreign authorities in the monitoring of companies in their jurisdictions?

  司法部是否会继续遵从外国政府在其管辖区域对公司的监察？

- Will corporate investigations resolve more expeditiously with DOJ's focus only on individuals substantially involved in or responsible for the misconduct?

  公司调查是否会随着司法部仅关注实质上参与不当行为或对不当行为负有责任的个人而更加迅速且有效地结案？

2. The SEC continues aggressive enforcement efforts.
证交会继续依据 FCPA 会计条款积极执法。

In 2018, 11 of the 14 corporate enforcement actions pursued by the SEC were based on alleged books and records or internal accounting controls violations, with no corresponding anti-bribery charges. This absence of anti-bribery charges is not particularly remarkable given enforcement statistics from prior years and the jurisdictional nexus required for anti-bribery charges, but this statistic does underscore a continuing trend of the SEC's aggressive use of the internal controls or books and records provisions.

2018 年，证交会发起的 14 项公司执法行动中有 11 项是基于指控账簿和记录或内部会计控制违法，但没有对应的反贿赂指控。鉴于往年的执法统计以及反贿赂指控所需的管辖关系，这一缺少反贿赂指控的现象并不特别显眼。但上述统计的确表明了证交会积极使用内部会计控制或账簿和记录规定的持续趋势。

Failure to timely integrate post-acquisition
在被收购企业和合资企业内未及时实施合规控制

This past year, the SEC pursued accounting provision charges against three companies for allegedly failing to stop improper conduct by not implementing adequate internal controls after an acquisition or joint venture formation, emphasizing the importance of pre-acquisition due diligence and post-acquisition integration.

2018 年，就所指的在收购或合资企业建立后未实施充分内部会计控制措施，因而未能阻止不当行为，证交会对三家公司提起了有关会计规定的指控，以强调收购前尽职调查和收购后整合的重要性。

- **Kinross Gold**: In its March 2018 order, the SEC alleged that Kinross Gold Corporation ("Kinross"), a Canadian mining company, failed to timely implement sufficient internal accounting controls and remediate known anti-corruption issues at two companies acquired in Mauritania and Ghana in 2010. The SEC alleged that although Kinross conducted due diligence on the two companies and learned that they lacked an anti-corruption compliance program and associated internal accounting controls, Kinross did not take steps to enhance the companies' internal accounting controls until approximately three years after the acquisition. The SEC also criticized Kinross for allegedly failing to take more swift action (i.e., within a year) after internal audit reports identified potential issues and recommended remediation steps. Kinross agreed to a no-admit/no-deny cease-and-desist order and a civil penalty of $950,000, with an obligation to report to the SEC for a one-year period on the status of its remediation efforts and implementation of compliance measures in its Africa operations. **Kinross Gold 公司**：在 2018 年 3 月发布的一项命令中，证交会指称，一家加拿大矿业公司 Kinross Gold Corporation（下称"Kinross"）未能在 2010 年在毛里塔里亚和加纳收购的两家公司及时实施充分的内部会计控制和补救已知的反腐败问题。证交会指称，尽管 Kinross 对两家公司进行了尽职调查，并得知它们缺乏反腐败合规计划和相关的内部会计控制，但在收购后约三年内并未采取措施加强它们的内部会计控制。证交会还批评 Kinross，指其在内部审计报告发现潜在问题并建议补救措施后未采取更快的（即在一年内）行动。Kinross 同意在不承认/不否认的情况下接受一项停止及禁止令及 950,000 美元的民事罚款，并承担一项在一年期限内向证交会报告其补救努力的进展以及与其非洲业务相关的合规措施实施情况的义务。

- **D&B**: In its April 2018 order, the SEC alleged that D&B failed to implement sufficient internal accounting controls after forming a joint venture and acquiring a new company in China, despite knowledge (at least at the regional level) that these entities had been acquiring data through improper payments. Regarding the joint venture, the SEC alleged that instead of stopping the practice of improper payments all together, regional management implemented a practice of using third-party agents to obtain the data. And regarding the newly acquired company, the SEC alleged that D&B failed to conduct further diligence post acquisition to determine whether improper payments were in fact being made. D&B did not admit or deny the SEC's allegations, but agreed to a cease-and-desist order and payment of over $7 million in disgorgement and prejudgment interest, as well as a $2 million civil penalty.
D&B：在 2018 年 4 月发布的一项命令中，证交会指称，D&B 在中国组建一家合资企业并收购一家新公司后未能实施充分的内部会计控制，尽管得知（至少在区域层面）这些实体一直在通过不当付款获得数据。关于合资企业，证交会指称，区域管理层并未完全阻止不当付款行为，而是采用了通过第三方代理人获得数据的做法。关于新收购的公司，证交会指称，D&B 在收购后未进行进一步的尽职调查，以确定是否有不当付款实际支付。D&B 未承认或否认证交会的指控，但同意接受一项停止及禁止令及缴付超过 700 万美元的非法所得和判决前利息以及 200 万美元的民事罚款。

- **Beam Suntory**: In July 2018, the SEC alleged that after Beam Suntory acquired a subsidiary in India in 2006, the company "provided [the subsidiary's] management with its Code of Conduct manuals and additional compliance training," but internal audits were not started until two years after the acquisition. Additionally, Beam Suntory kept existing management in place after it acquired the company, and it was that management who knew of and had orchestrated improper payments to government officials that allegedly continued after the acquisition. The SEC also alleged that from 2010 to 2011, Beam engaged an accounting firm and a U.S. law firm to review the subsidiary's operations in India; however, Beam failed to conduct the additional transaction testing or due diligence advised by these firms. Beam did not admit or deny the SEC's allegations, but agreed to a cease-and-desist order and payment of over $6 million in disgorgement and prejudgment interest, as well as a $2 million penalty.
Beam Suntory：2018 年 7 月，证交会指称，Beam Suntory Inc. (下称"Bean")在于 2006 年在印度收购一家子公司后，该公司"向[该子公司的]管理层提供了其行为准则手册和进一步的合规培训，"但内部审计直至收购后两年才开始。此外，Beam 在收购该公司后保留了原有的管理层，正是该管理层知悉并策划了对政府官员的不当付款，据指这些不当付款在收购后仍然存在。证交会还指称，从 2010 年至 2011 年，Beam 聘请了一家会计师事务所和一家美国律师事务所来审查该子公司在印度的业务；但是，Beam 未按上述机构的建议进行进一步的交易测试或尽职调查。Beam 未承认或否认证交会的指控，但同意接受一项停止及禁止令及缴付超过 600 万美元的非法所得和判决前利息以及 200 万美元的罚款。

Continued application of internal accounting controls provision to enforcement of internal hiring and due diligence policies
继续对内部聘用和尽职调查政策适用内部会计控制规定

The 2018 SEC enforcement actions also illustrate the SEC's broad view that a failure to enforce or implement controls surrounding anti-corruption-related policies, such as hiring and due diligence policies, is sufficient to establish a failure to implement adequate internal *accounting controls*. In a settlement with Credit Suisse, for example, the SEC alleged that the company failed to maintain an adequate system of internal accounting controls because it failed to meaningfully enforce or implement in practice policies that "prohibited the hiring of candidates referred by or related to officials from state-owned enterprises ("SOEs") or government ministries in order to obtain or retain business." As a result the company's Hong Kong subsidiary allegedly offered jobs or internships to numerous individuals referred by officials from Chinese SOEs to obtain business or other favorable treatment. The SEC charged Credit Suisse with violating both the anti-bribery and internal accounting controls provisions. Credit Suisse agreed to a cease-and-desist order with the SEC, including payment of nearly $30 million in disgorgement and prejudgment interest. Credit Suisse also entered into an NPA with DOJ for the same underlying conduct and agreed to pay a $47 million criminal penalty.

2018 年证交会的执法行动还表明了证交会的广泛适用立场：未围绕反腐败相关政策执行或实施控制（如聘用和尽职调查政策）足以构成未实施充分的内部会计控制。例如，在与瑞信的和解中，证交会指称，该公司未建立充分的内部会计控制体系，因为其未能在实践中有效地执行或实施"禁止为获得或保留业务而聘请国有企业或政府部委的官员推荐或与之相关的候选人"的政策。因此，该公司的香港子公司被指向中国国有企业官员推荐的多名个人提供职位或实习职位，以获得业务或其他有利待遇。证交会指控瑞信违反了反贿赂和内部会计控制规定。瑞信同意接受证交会发出的一项停止及禁止令，包括缴付近 3000 万美元的非法所得和判决前利息。瑞信还与司法部就同一相关行为签订了 NPA，同意支付 4700 万美元的刑事罚金。

Other enforcement actions from 2018 focused on the implementation of due diligence policies and controls. In an action against Vantage Drilling, the SEC alleged that the company "failed to properly implement internal accounting controls related to its use of third-party marketing agents." The company's policies "required due diligence and prudent safeguards against improper payments to be in place" for agents interacting with foreign governments on behalf of the company; however, the company allegedly failed to conduct due diligence and implement enhanced payment controls with respect to an agent engaged to help it secure contracts from Petrobras. As a result, the SEC alleged that the company violated the FCPA's internal accounting controls provision. Vantage Drilling agreed to the cease-and-desist order as well as the payment of $5 million in disgorgement. No penalty was imposed in light of the company's financial condition.

2018 年的其他执法行动专注于尽职调查政策和控制的实施。在一项针对 Vantage Drilling 的行动中，证交会指称，该公司"未能就其使用第三方营销代理人适当地实施内部会计控制。"对于代表该公司与外国政府互动的代理人，该公司的政策"要求针对不当付款实施尽职调查和审慎的预防措施"；但是，该公司被指未能就受聘帮助其从巴西石油公司获得合同的代理人进行尽职调查和实施更严格的付款控制。因此，证交会指称，该公司违反了 FCPA 的内部会计控制规定。Vantage Drilling 同意接受一项不承认/不否认的停止及禁止令及缴付 500 万美元的非法所得。鉴于该公司的财务状况，未实施处罚。

Similarly, in an enforcement action against a medical device company, the SEC alleged that the company failed to maintain an adequate system of internal accounting controls because, among other things, one of its subsidiaries failed to conduct due diligence on or train sub-distributors as required by company policy, and the company "failed to implement its internal accounting controls to detect and prevent the use of" those unauthorized sub-distributors. The SEC charged the company with violations of the FCPA's internal accounting controls provision as well as the books and records provision based on other alleged conduct. The company agreed to the cease-and-desist order and a payment of a civil penalty of $7.8 million.

同样，在针对一家医疗器械公司的执法行动中，证交会指称，该公司未建立充分的内部会计控制体系，主要理由是，其一家子公司未按公司政策要求对次级经销商进行尽职调查或培训，且该公司"未能实施其内部会计控制以发现和防止使用"这些未授权次级经销商的行为。证交会基于其他指称行为指控该公司违反了 FCPA 的内部会计控制规定以及账簿和记录规定。该公司同意接受一项不承认/不否认的停止及禁止令及缴付 780 万美元的民事罚金。

We see these cases as part of a continuing trend of SEC actions addressing control deficiencies in areas that are not traditionally viewed as accounting controls, e.g., controls over procurement, hiring, and third-party due diligence. Whether or not these areas were intended to be within the reach of the FCPA's internal accounting controls provision, issuers are well served to consider the SEC's expansive view in the design, implementation, and maintenance of their internal controls frameworks and anti-corruption compliance programs.

我们认为这些案件表明了一个持续的趋势，即证交会行动开始针对传统上不被视为会计控制（如对于采购、聘用、第三方尽职调查的控制）领域中的控制缺失。无论这些领域原来是否在 FCPA 内部会计控制规定的适用范围内，发行人在设计、实施和保留其内部控制框架和反腐败合规制度时最好考虑到证交会的扩大执法立场。

Applying the books and records and internal controls provisions to embezzlement with no connection to bribery or risk of bribery
将账簿和会计及内部控制规定适用于不涉及贿赂风险的贪污行为

Another 2018 enforcement action that underscores the broad scope of the FCPA's accounting provisions is the SEC's cease-and-desist order against Elbit Imaging Ltd. ("Elbit"). In Elbit, the SEC alleged that the company violated the FCPA's books and records and internal accounting controls provisions based on purported sales agent or consulting agreements in connection with three transactions. Although the SEC's allegations regarding two of those transactions indicate that there was a risk that some or all of the funds paid to the consultants may have been used to make corrupt payments to Romanian government officials or were embezzled, the SEC's allegations regarding the third transaction allege simply that sales agents were paid for purported services in connection with the sale of a portfolio of real estate assets in the U.S. as part of an embezzlement scheme by Elbit's then-CEO. The SEC alleged that the internal accounting controls of Elbit and its then-subsidiary were insufficient because they failed to detect the approximately $27 million in payments made to the consultants and sales agents despite no evidence of these third parties having provided any of the contracted services. The SEC also alleged that Elbit and its then-subsidiary improperly recorded the third-party payments as legitimate expenses. Although the civil penalty that Elbit paid to resolve the SEC's allegations was relatively low ($500,000), the enforcement action underscores the importance of issuers ensuring that their third-party controls are sufficiently adequate to detect not only potential corrupt payments but also embezzlement.

2018 年另有一项执法行动强调了 FCPA 会计条款适用范围之广：证交会对 Elbit Imaging Ltd.（下称“Elbit”）发出的停止及禁止令。在 Elbit 案中，证交会基于所指的与三项交易相关的销售代理或咨询协议指称该公司违反了 FCPA 的账簿和记录及内部会计控制规定。尽管证交会关于其中两项交易的指控表明，存在支付给顾问的部分或全部资金可能被用于向罗马尼亚政府官员支付腐败款项或被贪污的风险，但证交会关于第三项交易的指控仅仅指称，销售代理人就所指的与在美国出售一组不动产相关的服务而获得付款，这是 Elbi 当时首席执行官贪污密谋的一部分。证交会指称，Elbit 及其当时子公司的内部会计控制是不充分的，因为这些控制未能发现向顾问和销售代理人支付的约 2700 万美元款项，尽管没有证据表明这些第三方提供了任何合约服务。证交会还指称，Elbit 及其当时的子公司将上述第三方付款不当地记录为合法开支。尽管 Elbit 支付用以和解证交会指控的民事罚金相对较少（500,000 美元），但此项执法行动突出了发行人确保其拥有充分的第三方控制以发现潜在腐败付款和贪污的重要性。

Enforcement against state-owned entities for in-country conduct
就境内行为对国有实体进行的执法

As we have highlighted before, the SEC (and DOJ) also used the FCPA's books and records and internal accounting controls provisions in enforcement actions against Brazilian parastatals Petrobras and Eletrobras, both of which were victims of employee kickback schemes that benefited not only company employees (themselves considered "foreign officials" by U.S. authorities under the FCPA) but also Brazilian politicians. In both cases, the government alleged that inflated contracts and invoices served as a vehicle to generate funds used to pay kickbacks to Petrobras and Eletrobras employees, as well as Brazilian politicians and political parties.

如同我们之前强调的那样，证交会（及司法部）还在针对巴西半国营公司巴西石油公司和巴西电力公司的执法行动中使用了 FCPA 的账簿和记录及内部会计控制规定。上述两家公司均为员工回扣密谋的受害者，该密谋的受益者不仅有公司员工（其本身被美国政府根据 FCPA 视为“外国官员”），还有巴西政客。在这两个案件中，政府均指称，虚高金额的合同和账单旨在生成用于向巴西石油公司和巴西电力公司员工以及巴西政客和政党支付回扣的资金。

Petrobras resolved charges through coordinated agreements with DOJ, the SEC, and Brazilian authorities; while the Eletrobras settlement was limited to the SEC, with DOJ declining prosecution. Neither company was charged with violating the FCPA's anti-bribery provisions, even though in the case of Petrobras, the NPA noted that the bribes paid to Brazilian politicians "caused Petrobras to remain in [their] favor" and "to stop a Parliamentary Inquiry into Petrobras contracts." Likely a significant factor in DOJ's decision not to pursue anti-bribery charges was DOJ's view that the company and its shareholders were victims in the corruption scheme. The NPA also noted that, by entering into the agreement, Petrobras was not waiving any sovereign immunity arguments it might have. The SEC cease-and-desist order against Petrobras did not contain allegations suggesting that Petrobras may have benefitted from the scheme, but the order did allege that the corruption scheme resulted in material misstatements and omissions by Petrobras. The SEC order also alleged that Petrobras failed to maintain an adequate system of internal accounting controls because, among other things, Petrobras did not require employees to receive anti-corruption, anti-fraud, or compliance training and there was no formal process for vetting individuals nominated to senior management positions. Petrobras reached a global resolution of $1.78 billion under which it agreed to pay approximately $85.3 million each to the SEC and DOJ. The amounts to be received by the U.S. authorities took into account $682.5 million to be paid to Brazilian authorities and $933.4 million to be paid to shareholders in a pending securities class action.

巴西石油公司通过与司法部、证交会以及巴西政府协调达成协议解决了指控；巴西电力公司的和解仅与证交会达成，司法部拒绝起诉。两家公司均未被指控违反 FCPA 的反贿赂规定，即使在巴西石油公司案中，NPA 提到向巴西政客支付的贿赂"导致[政客们]继续支持巴西石油公司"且"导致针对巴西石油公司合同的一项议会调查停止。"在司法部不提起反贿赂指控的决定中很可能有一个重要的因素，即司法部认为，该公司及其股东是腐败密谋的受害者。NPA 还指出，通过签订该协议，巴西石油公司未放弃其可能拥有的任何主权豁免主张。证交会对巴西石油公司的停止及禁止令未包含表明巴西石油公司可能受益于该密谋的指控，但的确指称，贿赂密谋导致巴西石油公司实质上的不实陈述和疏忽。该证交会命令还指称，巴西石油公司未能拥有充分的内部会计控制制度，主要原因是巴西石油公司未要求员工完成反腐败、反欺诈或合规培训，且公司没有提名审查人员到高级管理职位的正式程序。巴西石油公司以 17.8 亿美元达成全球和解，根据和解协议，其同意向证交会和司法部各支付约 8,530 万美元。美国政府将收到的款项包括拟支付给巴西政府的 6.825 亿美元和在未决证券集体诉讼中拟向股东支付的 9.334 亿美元。

In the Eletrobras matter, the SEC alleged that the Eletrobras scheme ultimately benefitted certain construction companies, at least two Brazilian political parties and government officials, and several now-former officers at an Eletrobras subsidiary. Although there were no allegations that the bribes paid to Brazilian politicians benefitted the company, the SEC alleged that Eletrobras violated the books and records and internal accounting controls provision of the FCPA because of inflated contracts and sham invoices used in the scheme, and because the company failed to address "significant material weaknesses" in its internal controls over financial reporting, among other issues. Eletrobras agreed to a cease-and-desist order with the SEC and the payment of a $2.5 million civil penalty.

在巴西电力公司案件中，证交会指控阴谋最终使某些建筑公司、至少两个巴西政党和政府官员、以及巴西电力公司一家子公司的数名前高管获益。尽管不存在向巴西政客支付的贿赂使该公司受益的指控，但是证交会指控，由于该阴谋中存在合同金额虚高和账单作假问题，且因为公司未能解决其财务报告内部控制制度中的"重大实质缺陷"等问题，巴西电力公司违反了 FCPA 的账簿记录和内部会计控制规定。巴西电力公司接受了证交会发布的一项不承认/不否认的停止及禁止令，并同意支付 250 万美元的民事罚款。

Use of traditional accounting and disclosure charges coupled with FCPA charges
传统会计和披露指控结合 FCPA 指控的使用

The Panasonic and Petrobras enforcement actions also were notable because they illustrate that the SEC will not shy away from bringing traditional accounting and disclosure charges along with FCPA charges. This is not the first time that we have seen this pairing. For example, in 2016, General Cable settled FCPA charges relating to a corruption scheme in parallel with a separate SEC enforcement action relating to improper inventory accounting.

对松下与巴西石油公司执法行动还表明，证交会不会避免结合传统会计和披露指控提起 FCPA 指控。我们不是第一次观察到这一现象。例如，在 2016 年，通用电缆就涉及一项腐败密谋的 FCPA 指控达成和解，与此同时进行的还有一项独立的涉及不当存货会计的证交会执法行动。

In the case of Panasonic Corporation, the SEC alleged that the company violated the FCPA's anti-bribery, books and records, and internal accounting controls provisions because its U.S. subsidiary PAC, among other things, provided a post-retirement consultancy position to an official at a state-owned airline with whom PAC was negotiating certain agreements worth more than $700 million, paid the official $875,000 for little to no work, and failed to follow its own third-party due diligence protocols in Asia. In addition to these FCPA charges, the SEC also alleged that Panasonic Corporation fraudulently overstated pre-tax and net income by prematurely recognizing more than $82 million in revenue for a fiscal quarter in 2012. The premature revenue recognition was allegedly accomplished by backdating an agreement with the state-owned airline and providing misleading information to the company's auditor. In connection with these revenue recognition issues, the SEC charged Panasonic Corporation with violating Sections 10(b) and 13(a) of the Exchange Act, as well as Rule 10b-5.

在松下公司案中， 证交会指控该公司违反了 FCPA 的反贿赂、账簿和记录以及内部会计控制规定，主要是因为其美国子公司松下航空电子向一名国有航空公司的官员提供了退休后的顾问职位，而松下航空电子当时正在与该公司谈判价值超过 7 亿美元的某些协议，并在该官员几乎没有从事任何工作的情况下向该官员支付了 875,000 美元，且未能遵守其在亚洲的第三方尽职调查规范。除了上述 FCPA 指控外，证交会还指称，通过提前确认 2012 年一个财季超过 8,200 万美元的收入，松下公司欺诈性地多报了税前和净收入。据指称，上述提前收入确认是通过将一份与该国有航空公司的协议日期提前以及向该公司审计师提供误导信息来完成的。就这些收入确认问题，证交会指控松下公司违反了《证券交易法》第 10(b)和 13(a)条以及 10b-5 规则。

In the case of Petrobras, the SEC alleged that the company erroneously recorded kickback payments to its executives as expenses for the purposes of acquiring and improving assets, resulting in an estimated $2.5 billion overstatement of assets. According to the SEC, Petrobras's SEC filings misrepresented the company's assets, infrastructure projects, the integrity of its management, and the nature of its relationships with its majority shareholder, the Brazilian government. Based on this overstatement of assets, the SEC alleged that Petrobras violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit sellers of securities from obtaining money by means of fraud, deceit, untrue statements or omission of material facts. The SEC alleged that Petrobras's filings included materially false and misleading statements to U.S. investors in a $10 billion stock offering completed in 2010.

在巴西石油公司案中，证交会指称，该公司错误地将对其高管的回扣付款记为收购和改良资产的费用，导致约 25 亿美元的虚报资产价值。根据证交会的指称，巴西石油公司的证交会备案资料不实陈述了该公司的资产和基建项目、其管理层的完整性及其与其大股东巴西政府的关系性质。基于上述资产价值虚报，证交会指称，巴西石油公司违反了《证券交易法》第 17(a)(2)和 17(a)(3)条，上述规定禁止证券卖方通过欺诈、欺骗、不实陈述或重大事实的遗漏来获取金钱。证交会指称，在 2010 年完成的一项 100 亿美元的股票发行中，巴西石油公司的备案资料对美国投资者提供了重大虚假和误导性的陈述。

Both Petrobras and Panasonic serve as helpful reminders that the SEC remains focused on protecting investors, and will seek to hold issuers accountable to all securities laws, not just the FCPA.

巴西石油公司和松下执法案件提示我们，证交会仍然专注于保护投资者，且会努力依据证券法律（而不仅仅是 FCPA）让发行人承担法律责任。

Expansive view of agency in anti-bribery charge
证交会在反贿赂指控中的宽泛立场

The SEC brought three corporate enforcement actions in 2018 that included an anti-bribery charge against Credit Suisse Group AG, Panasonic, and United Technologies Corporation. Two of these enforcement actions included allegations that employees of the parent company were involved in the improper conduct. In the case of Credit Suisse, the SEC alleged that certain managers in the U.S. were aware of the allegedly improper hiring practices and approved some of the hires in question. In the case of Panasonic, the SEC alleged that one of the subsidiary executives involved in the corruption scheme also served as a director in one of the issuer parent company's business units. However, in the case of United Technologies, the SEC did not allege any knowledge or involvement by the parent company in the conduct underlying the anti-bribery charge, and instead simply alleged, without elaboration, that the parent company acted "through" its subsidiaries and "failed to detect the conduct." This is a notable case given that parent-level anti-bribery charges typically involve misconduct by employees at the parent company or specific allegations to support a theory under which a subsidiary or subsidiary employees are acting as agents of the parent. While the failure of a parent company to detect and prevent misconduct at a subsidiary might provide a basis for an internal controls charge, the FCPA's anti-bribery provisions require, among other things, corrupt intent. This aggressive charging theory provides further reason for issuers to ensure that they implement effective compliance programs in all controlled subsidiaries.

证交会在 2018 年针对以下公司开展了三起包含反贿赂指控的执法行动：瑞士信贷集团、松下和美国联合技术公司。其中两起执法行动涉及母公司员工参与实施不当行为的指控。在瑞士信贷一案中，证交会指控其美国的某些管理人员已经发现被指控的不当招聘行为且批准了其中的某些存疑的招聘。在松下案件中，证交会指控其子公司的某一参与了腐败密谋的高管同时还担任发行人母公司某一业务部门的负责人。但是，在美国联合技术公司案件中，证交会并未指控母公司知晓或参与相关反贿赂指控所基于的行为，相反，其仅指控母公司"通过"其子公司行事且"未能发现该等行为"（而未提供细节）。鉴于母公司级别的反贿赂指控通常涉及母公司员工的不当行为或支持子公司或子公司员工作为母公司代理人行动这一理论的具体指控，此案因此值得关注。尽管母公司未发现和阻止在子公司发生的不当行为可能成为内部控制指控的依据，但 FCPA 的反贿赂规定要求的主要是腐败意图。这种积极指控理论让发行人有更进一步的理由确保在其控制的所有子公司中实施有效的合规计划。

Could SEC Commissioner composition affect enforcement activity?
证交会委员的组成是否会影响执法行动？

As we enter 2019, we will be looking to see whether the current SEC commissioner make-up affects the agency's enforcement activity. For most of 2018, the SEC was led by five commissioners. However, due to term limitations, the SEC is starting 2019 with only four. Although it is not unusual for the SEC to have less than five commissioners at any given time because of the typically lengthy appointment process, this year the absence of a fifth commissioner may lead to stalemates in the approval of certain enforcement actions. At least one current commissioner (Commissioner Hester Peirce) has pointed to concerns that civil monetary penalties can have the effect of doubly penalizing shareholders as a reason for voting against certain corporate enforcement actions. Commissioner Peirce also has openly criticized the SEC's pursuit of what may be viewed as relatively minor securities law violations (which some have described as a "broken windows" approach to enforcement), and indicated that she will vote against enforcement actions on which she believes the SEC should not have spent its time. Looking at the SEC's Commission vote records, since her appointment in January 2018, Commissioner Peirce has voted against the approval of five FCPA enforcement actions and voted to approve except as to penalties five other FCPA enforcement actions. Commissioner Peirce has approved only three FCPA enforcement actions in their entirety. Whether the commissioner make-up ultimately has an effect on FCPA enforcement actions will likely depend on the length of the approval process for a fifth commissioner and whether any other Commissioners begin to follow Commissioner Peirce's position on penalties.

随着我们迈入 2019 年，我们将观察目前证交会委员的组成是否会影响其执法行动。在 2018 年的大部分时间，证交会由五名委员领导。但是，由于任期限制，在 2019 年初，证交会将仅有四名委员。由于委任过程耗费的时间通常很长，证交会在特定时期的委员人数少于五名并不罕见，但是，今年缺少第五名委员可能导致对某些执法行动的批准出现僵局。至少有一名现任委员（Hester Peirce 委员）已经指出民事罚款可能具有双重处罚股东效应的担心，并以此作为反对某些公司执法行动的理由之一。Peirce 委员还公开批评了证交会对于可能被视为较轻微的证券法违法行为（有人将其称为执法的“破窗”方法）的追究，并表示她将投票反对她认为证交会不应当耗费时间的执法行动。根据证交会的投票记录，自 Peirce 委员于 2018 年 1 月被任命以来，共投票反对批准五项 FCPA 执法行动，以及投票批准了六项仅有处罚的 FCPA 执法行动。Peirce 委员仅完全批准了三项 FCPA 执法行动。委员的组成最终是否影响 FCPA 执法行动，将很可能取决于委任第五名委员审批过程的长短以及是否有其他委员开始赞同 Peirce 委员在处罚上的立场。

What to watch for in 2019:
2019 年值得关注的问题：

- Will the SEC continue to pursue internal accounting controls charges based on failure to conduct due diligence, failure to timely remediate audit observations, or failure to implement adequate compliance programs post-acquisition?
  证交会是否将继续基于相关方未能开展尽职调查、未能及时补救审计结果或者未能在收购后实施合规计划而提起关于内部会计控制的指控？
- Will the SEC look to develop securities fraud charges based on material misstatements in more FCPA cases?
  证交会是否将寻求在更多的 FCPA 案件中基于重大虚假陈述提起证券欺诈指控？
- With the SEC down to four commissioners for the near future, will the SEC impose lower or fewer penalties in FCPA cases, and will fewer investigations lead to enforcement actions?
  在不远将来的一段期间内，证交会的委员人数将变为四名，那么证交会在 FCPA 案件中是否实施更轻或更少的处罚，是否会有更少的调查演变为执法行动？

3. Individual FCPA prosecutions remain a priority for DOJ, as well as the SEC. 针对个人的 FCPA 诉讼仍是司法部以及证交会的工作重点。

As reflected in the 2018 enforcement statistics, we expect individual prosecutions to remain a priority for DOJ, as well as the SEC, in 2019:

根据 2018 年的执法统计，我们预计在 2019 年针对个人的诉讼仍将是司法部以及证交会的工作重点：

- In 2018, DOJ announced twelve individual prosecutions for alleged FCPA violations (not counting the various non-FCPA charges against foreign officials and others, discussed in more detail below); and the SEC commenced enforcement actions against three individuals.

  2018 年，司法部宣布了十三项涉及 FCPA 违法行为的针对个人的诉讼（不包括针对外国官员及其他人的各种非 FCPA 指控，详见下文第 5 部分）；证交会启动了对三名个人的 FCPA 执法行动。

- DOJ also secured an FCPA trial victory for the second year in a row when a jury convicted former Hong Kong government official Chi Ping Patrick Ho in connection with a multi-year, multimillion-dollar scheme to bribe high-level government officials in Chad and Uganda in exchange for business advantages for CEFC China, a Chinese oil and gas conglomerate.

  司法部还连续两年取得 FCPA 胜诉：就一项旨在贿赂乍得和乌干达高级政府官员，从而为中国油气集团华信能源换取商业利益的长达多年、牵涉数百万美元的密谋，陪审团裁定前香港政府官员何志平有罪。

Of particular note over the past year were the indictments unsealed against several former bankers at multiple global financial institutions for their alleged participation in conspiracies to violate the FCPA by paying bribes to public officials and laundering billions of dollars in connection with investment banking transactions in emerging markets. These charges are reflective of DOJ's emphasis on pursuing individual wrongdoing, particularly where individuals may have knowingly and willfully circumvented corporate controls and concealed their conduct from others, including by misleading internal control personnel.

在过去的一年里，尤其值得注意的是，针对多家国际金融机构的几名前银行家的控告被公布。这些银行家被指密谋向政府官员支付贿赂，就新兴市场的投资银行交易洗钱数十亿美元，违反了 FCPA。这些指控反映了司法部对追究个人过错的侧重，尤其在个人可能知晓并故意规避公司控制措施和对他人隐瞒其行为（包括误导内部控制部门人员）的情况。

As in 2017, the overall number of individual prosecutions remains lower than we might expect given DOJ's expressed goal of increasing individual accountability in cases involving corporate wrongdoing. Of the eight corporate enforcement actions brought by DOJ in 2018, so far only two (those against Transportation Logistics and the Insurance Corporation of Barbados Limited) have involved corresponding prosecutions of individuals, although more charges involving the six other corporate actions could certainly be announced in the coming months and years. But, as we noted last year, 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. We expect that there will continue to be cases where DOJ will defer to non-U.S. enforcers in jurisdictions with proven track records of enforcement. For example, in the case of Petrobras, given the number of arrests and individual prosecutions pursued by Brazilian authorities, we would not expect DOJ to pursue the same individuals who have been or will be the subject of prosecutions in Brazil.

和 2017 年一样，尽管司法部制订了在涉及公司不当行为的案件中加大对个人问责力度的明确目标，但是，针对个人的诉讼总数仍然低于我们的预期。在司法部于 2018 年执行的八项公司执法行动中，截至目前只有两项（针对 Transportation Logistics 和 Insurance Corporation of Barbados Limited）涉及针对个人的诉讼，但涉及其他六项公司行动引起的指控有很大可能在未来数月或数年被公布。但是，正如我们去年指出的那样，我们预计司法部不会对所有受 FCPA 管辖的不法人员提起指控，尤其是在涉及相关行为主要发生在美国境外的非美国公民的案件中。我们预计，仍会有司法部遵从具有可信执法记录的管辖区的非美国监管机构决定的案例。例如，在巴西石油公司案中，鉴于巴西政府的逮捕和个人指控数量，我们预计司法部不会对曾经为或将为巴西诉讼对象的个人提起指控。

The emphasis on individuals extends beyond DOJ to the SEC, which in 2018 brought FCPA charges against three individuals, including the former CEO and president of PAC and the former CEO of a mining company, based on the same underlying conduct that led to DOJ and SEC corporate enforcement actions against those companies. The SEC also brought FCPA charges against a New Jersey real estate broker who allegedly attempted to bribe a foreign official from the Middle East as part of an effort to broker a property sale in Vietnam, and pursued non-FCPA accounting charges against the former CFO of PAC. Although three individual FCPA enforcement actions may not appear significant when compared to the 14 total SEC corporate enforcement actions from this past year, these actions do underscore that, where senior executives cause their employers to violate securities laws, there is a significant risk of personal exposure in an SEC action. As Antonia Chon, Associate Director of the SEC's Enforcement division noted in the press release regarding the enforcement actions against the former PAC executives, "[h]olding individuals accountable, particularly senior executives, is critical. Compliance starts at the top and senior executives who fail in their duty to comply with the federal securities laws will be held responsible."

对个人的关注从司法部延伸到了证交会，证交会在 2018 年对三名个人提起了 FCPA 指控，包括：对一名新泽西州的房地产经纪人提起 FCPA 指控，该经纪人被指为了就越南一处物业的销售承揽经纪业务而企图贿赂一名来自中东的外国官员；一家先前已与司法部和证交会达成 FCPA 和解执法行动的矿业公司的前首席执行官；以及依据导致司法部和证交会对松下航空电子及其母公司采取执法行动的相同行为，而对松下航空电子的前首席执行官兼总裁提起指控。证交会还依据上述的收入确认问题，对松下航空电子的前首席财务官提起非 FCPA 会计指控。尽管三项个人 FCPA 执法行动与去年证交会总计 14 项公司执法行动相比不一定显著，但这些行动的确表明，如果高管促使其雇主违反证券法律，会在证交会行动中产生重大的个人风险。正如证交会执法部副主任 Antonia Chion 在关于针对松下航空电子前高管的执法行动的新闻稿中指出的那样，"对个人（尤其是高管）问责十分关键。合规是自上而下的，未尽责遵守联邦证券法律的高管将被追究责任。"

4. FCPA-related court decisions from 2018 create potential enforcement limits for DOJ and the SEC.
2018 年的 FCPA 相关法院裁定给司法部和证交会设置了潜在的执法限制

In 2018, we saw two important court decisions that have the potential to limit DOJ's and the SEC's FCPA enforcement capabilities: *United States v. Hoskins* and *SEC v. Cohen*.

2018 年，我们注意到两项重要的法院裁定，这些裁定有可能限制司法部和证交会的 FCPA 执法能力，即美国政府诉 Hoskins 案和证交会诉 Cohen 案。

DOJ has long taken the position in FCPA cases that the "United States generally has jurisdiction over all the conspirators where at least one conspirator is an issuer, domestic concern, or commits a reasonably foreseeable overt act within the United States." This expansive interpretation of the FCPA's jurisdictional reach was rejected in *United States v. Hoskins*, as we previously discussed. Whether *Hoskins* will have a significant effect on prosecutorial charging decisions is unclear. In litigation outside the Second Circuit, DOJ has already taken the position that *Hoskins* is not binding in other circuits, arguing that the Second Circuit's interpretation of the statute was incorrect. Moreover, the *Hoskins* opinion is decidedly narrow. Foreign defendants who commit corrupt acts abroad may still be prosecuted if they fall within one of the FCPA's many categories of covered persons, including "agents" of U.S. issuers or domestic concerns, and they may be within the reach of U.S. anti-money laundering laws. One area where *Hoskins* has the potential to make a lasting and significant impact are cases involving foreign, non-controlled joint ventures of issuers and domestic concerns, and foreign joint-venture partners, where DOJ may struggle to prove that an agency relationship existed due to the absence of control over the foreign joint venture or joint-venture partner—a critical factor in any agency inquiry.

司法部一直以来在 FCPA 案件中采取的立场是：“美国一般而言对所有共谋者拥有管辖权，只要至少其中一名共谋者是发行人、国内法人或在美国境内从事了一项可合理预见的公开行为”。正如我们之前讨论的那样，这种对 FCPA 管辖范围的宽泛解释在美国政府诉 Hoskins 案中被拒绝采纳。Hoskins 案是否会对检察机关的指控决定产生重大影响尚不明确。在第二巡回法院之外的诉讼中，司法部已经持有 Hoskins 案在其他巡回法院中不具约束力的立场，并主张第二巡回法院对法规的解释不正确。而且，Hoskins 案意见涵盖的范围显然是很狭窄的。在海外从事腐败行为的外国被告人如属于 FCPA 的许多涵盖人类别之一（包括美国发行人或国内法人的“代理人”），则仍有可能被起诉，且其可能在美国反洗钱法律的适用范围内。Hoskins 案有望对涉及发行人和国内个人及法人的外国、未控股合资企业以及外国合资伙伴的案件产生持久和重大的影响。在此类情形中，由于对外国合资企业或合资伙伴缺乏控制权（任何代理问题的关键因素），司法部可能会力图证明存在代理人关系。

As we discussed in a previous client alert, in *SEC v. Cohen*, a federal district court dismissed an SEC enforcement action, in its entirety, on statute-of-limitations grounds. Most notably, citing the Supreme Court's 2017 *Kokesh* decision, the court held that the injunction sought by the SEC in the case "would function at least partly to punish Defendants and is therefore a penalty" for purposes of the five-year statute of limitations applicable to all federal government actions seeking a civil fine, penalty, or forfeiture. The court held that the requested injunction fell within the ambit of *Kokesh*'s reasoning because the SEC sought the injunction to benefit the public, rather than an aggrieved individual, and because the injunction would label the defendants as wrongdoers—a form of punishment. Although the court stated that it was limiting its decision to the specific injunction sought in that case, the court's reasoning would appear to extend to all obey-the-law injunctions sought by the SEC.

如同我们在之前一份客户期刊中讨论的那样，在证交会诉 Cohen 案中，一个联邦地区法院基于诉讼时效理由完全驳回了证交会的一项执法行动。非常值得注意的是，法院引用了最高法院 2017 年 Kokesh 案的裁决，并认为，证交会在本案中寻求的禁令“至少部分上会起到惩罚被告人的作用，因而，禁令”对适用于所有寻求民事罚金、处罚或没收的联邦政府行动的五年诉讼时效而言，“属于处罚。”法院认为，所请求的禁令属于 Kokesh 案推论的范畴，因为证交会寻求禁制令是为了公众（而不是受害个人）的利益，而且禁令会将被告人标记为违法者——即一种形式的惩罚。尽管法院表示，其裁决仅适用于该案中寻求的特定禁令，但法院的推论可能会延伸至证交会请求的所有守法禁令。

Although not directly related to the SEC's enforcement authority under the FCPA, another significant court decision from 2018 was the Supreme Court's decision in *Digital Realty Trust Inc. v. Somers*, holding that the Dodd-Frank Act prohibits retaliation against whistleblowers only if they report suspected wrongdoing *directly to the SEC*. As we have noted in our client alert, the primary significance of *Digital Realty* is its impact on the process available to employees with whistleblower retaliation claims. Because employees who report internally, but not to the SEC, are now excluded from Dodd-Frank's anti-retaliation remedies, their recourse for retaliation is limited to state-law claims or private actions under Sarbanes-Oxley. Even with this exclusion from protection under Dodd-Frank, however, the critical message for companies is that it remains illegal to retaliate against whistleblowers.

尽管与证交会在 FCPA 下的执法权限并不直接相关，2018 年还有一项重要的法院裁决，即最高法院在 Digital Realty Trust Inc. 诉 Somers 案中的裁决，该裁决认为，只有在举报人*直接向证交会*报告疑似不当行为的情况下，《多德-弗兰克法案》禁止对举报人打击报复的规定才适用。如同我们在客户期刊中指出的那样，Digital Realty 案的主要意义在于其对提出举报人报复权利主张的员工可获得程序的影响。由于在内部举报而非向证交会举报的员工现在被排除在《多德-弗兰克法案》的反报复救济范围之外，他们对于报复的追索权仅限于州法律权利主张或《萨班斯-奥克斯利法案》下的私人诉讼。即使有来自《多德-弗兰克法案》下保护的这一例外，但给公司带来的关键信息是：对举报人进行报复仍然是非法的。

5. The U.S. and UK authorities continued to leverage anti-money laundering statutes to target foreign government officials involved in corruption schemes, while the U.S. government also leveraged new sanctions regimes.
美国和英国政府继续运用反洗钱法规针对参与腐败阴谋的外国政府官员，而美国政府也运用了新的制裁体系

Anti-money laundering developments
反洗钱动态

In 2018, DOJ continued to leverage U.S. anti-money laundering statutes to bring charges against foreign officials as well as other individuals involved in bribery schemes. These individual prosecutions targeted, among others: former officials of Petróleos de Venezuela S.A. ("PDVSA"), Venezuela's state-owned energy company; a former Venezuelan national treasurer; two former executives of Ecuador's state-owned Empresa Pública de Hidrocarburos del Ecuador ("PetroEcuador") and two U.S. citizens involved in the alleged PetroEcuador bribery scheme; an official of Aruba's national telecommunication provider; and two individuals whom the government alleged were foreign officials because they worked for a consulting firm hired on behalf of the state-owned joint venture between Kazakhstan's KazMunayGas and China's National Petroleum Corporation.

2018 年，司法部继续运用美国反洗钱法规对外国官员以及其他参与贿赂密谋的个人提起指控。这些个人起诉主要针对：委内瑞拉国有能源公司 Petróleos de Venezuela S.A.（下称"PDVSA"）的前官员；一名前委内瑞拉财政部长；厄瓜多尔国有企业 Empresa Pública de Hidrocarburos del Ecuador（下称"PetroEcuador"）的两名前高管以及参与所指 PetroEduador 贿赂密谋的两名美国公民；阿卢巴岛国家电信提供商的一名官员；以及政府所指的两名外国官员的个人（被视为外国官员的原因是：此二人在一家咨询公司工作，而该咨询公司受聘服务于哈萨克斯坦 KazMunayGas 与中石油设立的国有合资企业。）

Notably, in addition to money laundering charges being brought based on transfers of corrupt payments or proceeds involving the U.S. financial system, two of the schemes that led to charges against former Venezuelan officials last year also involved currency exchange schemes. In one case, PDVSA officials and foreign companies allegedly leveraged the country's fixed U.S. dollar exchange rate and a PDVSA loan program to generate funds for bribes that were paid in exchange for favoring the foreign companies. In another case, the former Venezuelan national treasurer, a Venezuelan billionaire and other unnamed conspirators also allegedly leveraged a bond sales program created by the Venezuelan National Treasury that used a higher exchange rate to generate funds for bribes in exchange for the opportunity to participate in the bond sales program. These cases are a reminder that currency exchange controls and foreign exchange remittance processes present considerable corruption risk in a number of jurisdictions, and should be an area of focus in many companies' anti-corruption compliance programs.

值得注意的是，除了基于牵涉美国金融系统的腐败付款或收益转移的洗钱指控外，去年导致对前委内瑞拉官员指控的两项密谋也涉及货币兑换密谋。在一个案件中，PDVSA 官员和外国公司被指利用该国的固定美元汇率和一个 PDVSA 贷款项目来获得贿赂资金，并支付这些贿赂为外国公司换取好处。在另一个案件中，前委内瑞拉财政部长、一名委内瑞拉亿万富豪以及其他未指名的共谋者被指利用委内瑞拉财政部建立的一个债券销售项目，以较高的汇率获得贿赂资金，以换取参与该债券销售项目的机会。这些案件提醒我们，在若干管辖区，货币兑换控制和外汇汇款流程呈现出相当大的腐败风险，应当成为许多公司反腐败合规计划中的重点关注领域。

Another notable development in the ongoing prosecution of individuals in connection with the alleged PetroEcuador money laundering and bribery scheme is the intervention or expected intervention by PetroEcuador in recent months in the criminal proceedings seeking restitution from three of the five defendants for the losses allegedly suffered by PetroEcuador as a result of the bribery scheme. PetroEcuador has not filed the motion in the cases pending against two PetroEcuador officials. Instead, PetroEcuador has only filed the motion in the cases pending against a former financial advisor and an Ecuadorian citizen who allegedly assisted PetroEcuador officials in laundering the bribes, and is expected to file a similar motion against the U.S.-Ecuadorian citizen who is accused of facilitating bribes the officials. While not unprecedented, such motions to seek restitution are relatively rare.

另一项在与所指 PetroEcuador 洗钱和贿赂密谋有关的个人诉讼中，值得注意的动态是，在就公司被指因该贿赂密谋遭受损失而索取赔偿的刑事程序中，PetroEcuador 在近几个月进行的干预。PetroEcuador 已干预或将要干预三个涉及个人被指控向 PetroEcuador 官员支付贿赂或者洗白贿赂的案件。在针对两名认罪并因洗白贿赂收益而判刑的 PetroEcuador 官员的未决案件中，PetroEcuador 尚未提交类似申请。

In the UK, the Serious Fraud Office ("SFO") secured a Proceeds of Crime Act ("POCA") victory in the long-running Chad Oil matter in March 2018 recovering £4.4 million that will be invested in development programs to benefit the people of Chad. The underlying bribery scheme had included the transfer of company shares to the wife of a Chadian official, and the SFO asserted jurisdiction over the shares when the company was taken over and put up for sale by a UK broker. The SFO also commenced a civil recovery action in October 2018 to recover assets, including three UK properties, alleged to represent the proceeds of corrupt telecommunications deals in Uzbekistan.

在洗钱法律被长久用来惩治腐败的英国，严重欺诈局（下称"SFO"）根据《犯罪收益法》（下称"POCA"），于 2018 年 3 月在旷日持久的乍得石油案中取得了胜诉，收回 440 万英镑，该笔资金将投资于发展项目，以造福乍得人民。相关贿赂密谋包括将公司股份转给一名乍得官员的妻子。当公司被一个英国经纪人收购并出售时，SFO 对这些股份主张了管辖权。SFO 还于 2018 年 10 月启动了一项民事追偿行动，以追偿包括三处英国物业在内的资产（据指为乌兹别克斯坦腐败电信交易收益）。

The UK's anti-money laundering enforcement arsenal was strengthened in 2018 by various reforms introduced through the Criminal Finances Act, including the introduction of the Unexplained Wealth Order ("UWO"). A UWO is a court order that requires a politically exposed person or a person suspected of involvement in serious crime to explain how they obtained property where there are reasonable grounds to suspect that the person would not have been able to obtain the property with lawfully-obtained income. A failure to provide a response to a UWO may give rise to a presumption that the property is recoverable in a subsequent civil recovery action, and making a false statement in response to a UWO is a criminal offense. The UK's first UWO required the wife of a former Azerbaijani official (who was convicted of fraud and embezzlement in 2016) to explain how she was able to afford £22 million in real estate, in addition to having spent £16 million at the high-end London department store Harrods over the course of a decade. The High Court dismissed an application to discharge the order in October 2018.

通过《刑事金融法案》带来的各项改革，包括《不明来源财富令》（下称“UWO”）的出台，英国的反洗钱执法体系也在 2018 年得到了增强。UWO 是一项法院命令，如果有合理理由怀疑某高知名度政治人物或疑似参与严重犯罪的人获得了本无法以合法获得的收入取得的财产，则要求他们解释如何获得该等财产。如未答复 UWO，则会引起下列假设：可在后续民事追偿行动中追偿该财产，且在答复 UWO 时作出虚假陈述是刑事犯罪。英国的首项 UWO 要求一名前阿塞拜疆官员（该官员于 2016 年被判犯有欺诈和贪污罪）的妻子解释她如何能够买得起价值 2,200 万英镑的不动产，以及如何能够在十几年内在伦敦高端百货商店哈洛德百货花费 1,600 万英镑。高等法院于 2018 年 10 月驳回了撤销该命令的申请。

Use of sanctions regimes to target corrupt actors
利用制裁机制打击腐败分子

The U.S. government has also been employing sanctions to target foreign officials and other individuals believed to be involved in corruption. For example, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") imposed a number of sanctions pursuant to Executive Order 13818, which implements the Global Magnitsky Human Rights Accountability Act and authorizes the blocking of property of parties involved in serious human rights abuses or corruption. The Executive Order defines corruption broadly, and sanctions may be imposed on a broad group of parties—including government officials, or persons acting on their behalf, who directly or indirectly engage in corruption, or the transfer of the proceeds of corruption, as well as other parties who provide support to such persons or in respect of such activities. Since the Executive Order was signed in December 2017, Global Magnitsky Sanctions have been imposed on a number of individuals and entities believed to be engaged in corruption.

美国政府同时已经运用制裁机制来打击其确信牵涉腐败的外国公职人员和其他个人。例如，美国财政部海外资产控制办公室（下称“OFAC”）根据第 13818 号行政命令实施了多项制裁，第 13818 号行政命令对《全球马格尼茨基人权问责法》进行贯彻落实，并授权封锁牵涉严重侵犯人权或腐败行为的相关方的财产。行政命令对腐败作了广义定义，同时，制裁可被施加于群体——包括直接或间接参与腐败、或者转移腐败所得的政府官员或代其行事的人员，以及向该等人士或就该等活动提供支持的其他方。自 2017 年 12 月上述行政命令签署以来，全球马格尼茨基制裁已被施加于确信参与腐败的许多个人和实体。

The President also issued executive orders in November 2018 focused on Venezuela (E.O 13850) and Nicaragua (E.O. 13851), which give OFAC the authority to sanction parties involved in transactions involving deceptive practices or corruption related to the governments of Venezuela or Nicaragua. A number of individuals and entities have already been sanctioned pursuant to the Venezuela Order.

总统在 2018 年 11 月还发布了针对委内瑞拉和尼加拉瓜的行政命令，分别为第 13850 号行政命令与第 13851 号行政命令，根据该等行政命令的授权，若交易涉及与委内瑞拉政府或尼加拉瓜政府相关的欺诈或腐败行为，则 OFAC 有权对交易所涉各方实施制裁。目前已根据关于委内瑞拉的命令对许多个人和实体实施制裁。

Sanctions are a flexible tool that the government can use to take action against corrupt actors in cases where an enforcement action under the FCPA or anti-money laundering laws may not be viable—there is no need to undergo judicial review prior to imposing sanctions, and they can be imposed regardless of whether the conduct at issue has any nexus to the United States. Though sanctions are not criminal in nature, they give rise to significant reputational, practical, and commercial consequences, including, for example, loss of access to the U.S. market and, for individuals, denial of entry to the United States.

如果 FCPA 或者反洗钱法律规定的执法行动不太可行，则制裁是政府可用于针对腐败分子采取行动的一项灵活工具——无需在实施制裁前经历司法审查，且无论所涉行为是否与美国有任何联系，均可实施制裁。虽然制裁并不具有刑事性质，但是它们会在声誉、实践以及商业方面带来重大的影响，包括失去进入美国市场的机会，以及对个人而言，被拒绝进入美国领土，等等。

6. Top Anti-Corruption Enforcement Trends and DevelopmentsIn Europe, recent developments suggest that the UK, France, and Ireland will step up enforcement. 在欧洲，近期的动态表明，英国、法国和爱尔兰将加快执法步伐。

Relatively few bribery cases were resolved by the SFO in 2018, but a new director may mean more activity in 2019
英国 SFO 在 2018 年解决的贿赂案件相对较少，但是 SFO 新主任的上任可能意味着 2019 年执法行动将增加

In June 2018, British-American lawyer Lisa Osofsky—who has experience on both sides of the Atlantic, having worked at DOJ and the FBI before moving to the UK, where she has held roles in-house and with leading compliance consulting firms—was named the new head of the SFO. Comments delivered by Osofsky and other senior SFO officials over the course of 2018 provide insight into the SFO's priorities for the coming year and the direction the agency may take under its new leadership.

2018 年 6 月，英美律师 Lisa Osofsky 被任命为 SFO 新的负责人，Osofsky 在大西洋两岸均有相关工作经验，在前往英国工作之前，其曾在司法部和联邦调查局工作，在英国，其曾在企业和领先的合规咨询公司任职。通过 Osofsky 和 SFO 其他高级官员在 2018 年发表的意见，可以洞悉 SFO 来年的工作重点以及 SFO 在新的负责人带领下可能采取的路线。

Osofsky has emphasized a desire to progress cases more quickly. In December 2018, she told a House of Commons Justice Committee that the slow pace of SFO investigations was the most significant criticism she had heard since taking on the role of Director, and that she was personally reviewing the evidence in over 70 cases to understand why they had gone on so long and the strategy for resolving them. Given Osofsky's background, the coming year may see the SFO adopt aggressive investigative tactics similar to those used in the U.S. For example, Osofsky has indicated that she hopes to speed cases up by using proactive investigative techniques such as persuading corporate insiders to cooperate in investigations, focusing on cooperation with international counterparts to ensure that key intelligence is shared, and harnessing technology to identify key documents quickly. Osofsky has also appointed a new Head of Intelligence to ensure that sufficient focus is given to proactive intelligence development.

Osofsky 强调了更快速推动案件进展的意愿。2018 年 12 月，她告诉下议院的一个司法委员会，自从她就任 SFO 主任职务以来，她听到的最严重的批评就是 SFO 调查进展缓慢，并且称她亲自审查了超过 70 起案件的证据，目的是了解为何这些案件花费的时间如此之长，以及了解解决案件的策略。考虑到 Osofsky 的背景，SFO 来年可能借鉴美国使用的某些积极调查策略。例如，Osofsky 表示，她希望通过使用积极的调查手段，例如说服公司知情人士配合调查，通过加强与国际相关部门的合作以确保互通关键情报，以及通过利用技术快速确认关键文件，从而加速办案进度。Osofsky 还新任命了情报负责人，以确保对积极的情报发展给予充分关注。

Though relatively few corruption cases were resolved by the SFO in 2018, we may see more activity in 2019, given the current drive to speed up cases and the fact that a number of long-running investigations remain open. Notable resolutions in 2018 included the convictions of a UK Alstom subsidiary and three Alstom executives (resulting from an investigation initiated by the SFO in 2009, and following a $772 million settlement between Alstom S.A. and the U.S. authorities in 2014), and convictions of three former executives of the FH Bertling Group and one former ConocoPhillips employee in connection with a commercial bribery scheme involving payments made by FH Bertling employees to win a contract from ConocoPhillips and obtain assurance that inflated prices would be approved. The Alstom and FH Bertling actions both delivered mixed results for the SFO; the convictions came alongside several acquittals, and the defendants in the FH Bertling matter were spared prison when their sentences were suspended in January 2019. The SFO also filed new charges, including against employees of Güralp Systems in connection with allegations of bribery in South Korea, and certain Unaoil entities and related individuals in connection with the Unaoil investigation that was initiated in 2016.

虽然 SFO 在 2018 年解决的腐败案件相对较少，但是，考虑到目前加速办案的冲劲以及许多长期调查案件仍在进行的事实，我们可能看到，2019 年将迎来更多的行动。2018 年解决的案件中令人瞩目的包括对阿尔斯通一英国子公司以及三名阿尔斯通高级管理人员的定罪（起源于 SFO 在 2009 年启动的一项调查，发生于 Alstom S.A.和美国权力机关于 2014 年达成的 7.72 亿美元和解之后），以及对 FH Bertling Group 三名前高级管理人员和 ConocoPhillips 一名前雇员的定罪，该定罪涉及 FH Bertling 雇员为获得 ConocoPhillips 的一份合同以及获得关于价格上涨将获得批准的保证而支付款项的商业贿赂阴谋。阿尔斯通和 FH Bertling 行动均给 SFO 带来了喜忧参半的结果；前述定罪伴随着数项无罪释放，当 FH Bertling 案件中的被告在 2019 年 1 月被判处缓刑时，他们被免于监禁。

As in the U.S., a company seeking a favorable resolution in an SFO matter is expected to cooperate with the SFO's investigation. The SFO's expectations with respect to cooperation are broadly similar to those of the U.S. authorities—Osofsky defined cooperation in a recent address as "making the path to admissible evidence easier" through making documents, financial records, and witnesses available, pointing prosecutors to key evidence, and not creating proof issues or procedural barriers. However, companies should be alert to certain key differences between the cooperation expectations of the U.S. authorities and those of the SFO. For example, a company in a cooperative posture with the SFO may be asked to waive privilege over documents created in the course of a privileged investigation (in contrast to the U.S., where the Justice Manual expressly provides that "prosecutors should not ask for [privilege] waivers and are directed not to do so."). In a recent speech, the SFO's joint head of bribery and corruption, Matthew Wagstaff, stated that the SFO may ask companies to waive privilege over factual accounts created during investigations, and that "the refusal to do so may well be incompatible with an assertion of a desire to cooperate." Those comments echo a passage in the recent *SFO v. ENRC* decision, where the Court of Appeal commented (in *obiter dicta*) that in determining whether to approve a DPA, a court "will consider whether the company was willing to waive any privilege attaching to documents produced during internal investigations."

如同在美国一样，对于寻求在 SFO 管辖的案件中获得有利处理结果的公司，SFO 期望公司配合 SFO 的调查。虽然 SFO 的合作期望总体上类似于美国权力机关的期望——Osofsky 在近期的一次讲话中将合作定义为通过提供文件、财务记录和证人、向检察官出示关键证据以及不制造证明问题或程序障碍而"使可采信证据的获得更加容易"，但是，公司应当注意美国权力机关的合作期望与 SFO 的合作期望之间的某些关键区别。例如，与 SFO 合作的公司可能被要求放弃对在受特权保护的调查过程中产生的文件的特权，与此相反的是，在美国，《司法手册》明确规定"检察官不得要求相关方放弃[特权]，且被指示不要这么做"。在近期的一次演讲中，SFO 反贿赂和腐败部门联合负责人 Matthew Wagstaff 称，SFO 可能会要求公司放弃对调查期间产生之事实描述的特权，且"拒绝这么做的话可能与希望合作的宣称相当不符"。Wagstaff 的意见让人想起近期 *SFO v. ENRC* 判决通过的一项内容，在该案的判决中，上诉法院（在附带意见中）表示在认定是否批准一份 DPA 时，法院"将考虑公司是否愿意放弃在内部调查过程中产生之文件相关的任何特权"。

We also expect that the SFO's scrutiny of compliance programs will likely increase under Osofsky's leadership. Osofsky brings a wealth of compliance expertise to the agency, and she has made clear that companies seeking DPAs must be able to demonstrate that their compliance programs are effective in practice. In a keynote address delivered at an FCPA conference in November 2018, Osofsky said that favorable dispositions will not be available to corporations unless they have compliance systems that are effective, including by embedding controls and compliance processes into the corporate structure "so that they cannot simply be undone when no longer convenient." She stressed that "window dressing will not suffice" and that companies seeking DPAs should be prepared for the SFO to "ask tough questions on this subject."

同时，我们预计，在 Osofsky 的领导下，SFO 很可能将加大对合规计划的审查力度。Osofsky 为 SFO 带来了大量的合规专业知识，且她明确表示，寻求获得 DPA 的公司必须能够证明他们的合规计划行之有效。在 2018 年 11 月召开的一次 FCPA 会议上发表的一项主题演讲中，Osofsky 表示，除非公司具备有效的合规制度，包括将控制措施和合规程序融入公司结构"从而避免在它们不再合适之时简单地予以撤销"，否则，公司将无权获得有利的处理方案。她强调"门面功夫远远不够"，寻求获得 DPA 的公司应当准备好回答 SFO"就相关事项提出的尖锐问题"。

Enforcement activity ramped up in France
法国的执法行动增加

The past year saw the first wave of anti-corruption enforcement in France since the December 2016 passage of *Loi Sapin II*, which introduced a number of changes to the French anti-corruption framework, including by introducing a DPA-styled settlement mechanism known as a *Convention judiciaire d'intérêt public* ("CJIP").

我们看到，2016 年 12 月反腐败法律 Loi Sapin II 通过以后，法国在过去的一年开展了首批反腐败执法行动。Loi Sapin II 对法国反腐败制度作出了许多变革，包括引入被称为公共利益司法协约（下称"CJIP"）的、类似于 DPA 的和解机制。

France secured four CJIPs in corruption cases in 2018, including three relating to bribes paid by employees of French companies to a public utility company in France (with fines ranging from €420,000 to €2,710,000) and a settlement with Société Générale relating to historical conduct in Libya, which included the imposition of a €250,755 fine by the French authorities (in addition to penalties imposed in a parallel settlement with DOJ). Each of the four CJIPs included a requirement to submit to a compliance program monitorship by France's new anti-corruption agency, the *Agence française anticorruption* ("AFA"), with the monitorships ranging from 18 months to two years in length.

2018 年，法国就腐败案件获得了四份 CJIP，其中三份涉及法国公司员工向法国一家公用事业公司行贿（罚款金额从 420,000 欧元到 2,710,000 欧元不等），另外一项系就 Société Générale 在利比亚的历史行为与 Société Générale 达成的和解，包括法国权力机关施加的 250,755 欧元的罚款（同时与司法部达成的一项平行和解也作出了处罚）。四份 CJIP 均包括一项要求，即服从法国新的反腐败机构法国反腐败局（“AFA”）的合规计划监督，监督期限从 18 个月到两年不等。

The AFA also commenced its statutorily mandated compliance program audits in 2018. As a reminder, *Loi Sapin II* established mandatory compliance program requirements for certain large French companies and created penalties for failure to implement those elements, regardless of whether any corruption offence has occurred. The law also tasked the AFA with conducting audits to assess compliance with the requirements. To help companies prepare for audits, the AFA has published detailed compliance program guidelines and the 163-item questionnaire it uses to commence the audit process, which make clear that companies subject to the *Loi Sapin II* requirements will need to be prepared to demonstrate that their compliance programs go well beyond written policies and procedures and are effective in practice.

AFA 也于 2018 年启动了其法律强制合规计划审查。需要注意的是，Loi Sapin II 为某些大型法国公司制定了强制合规计划要求，并且规定，无论是否已经发生任何腐败行为，只要未实施前述各项内容，就将面临处罚。Loi Sapin II 还规定 AFA 的职责之一是审查评估对前述要求的遵守情况。为帮助公司迎接审查，AFA 已经发布了其用于启动审查程序的详细合规计划指南和包含 163 项内容的问卷，该等指南和问卷明确表示受限于 Loi Sapin II 要求的公司需要准备好证明其合规计划远非纸上谈兵，而应是行之有效的政策和程序。

New anti-corruption law in Ireland came into force
爱尔兰新的反腐败法生效

In July 2018, a new anti-corruption law came into force in Ireland. The Criminal Justice (Corruption Offences) Act 2018 (“CJCOA”) creates a variety of offenses, including active and passive corruption and trading in influence, and a strict liability corporate offense where a person associated with a company (including an employee, agent, or subsidiary, among other parties) commits an offense with the intention of obtaining or retaining a benefit for the company. A defense is available where the company is able to “prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.” The CJCOA notably contains clauses that reverse the burden of proof in certain circumstances and create a presumption of corrupt intent, including where a gift or other advantage has been given to an official tasked with carrying out a function in which the donor had an interest (such as granting a tender or license), or in certain circumstances involving political donations. The CJCOA has extra-territorial effect where a party subject to Irish jurisdiction (e.g., an Irish company or citizen) has committed an act that constitutes an offense under the CJCOA and under the law of the place where the act occurred. In tandem with the passage of the new law, Ireland’s national police force established a new anti-corruption unit in 2017.

2018 年 7 月，爱尔兰施行了一部新的反腐败法律。《2018 刑事司法（腐败行为）法》（下称“CJCOA”）规定了多种违法犯罪行为，包括主动和被动腐败及影响力交易，且该法规定，如果公司关联人员（包括员工、代理或子公司等各方）为替公司获得或保留利益而实施违法犯罪行为，则对于公司违法犯罪行为的认定，适用严格责任。如果公司能够“证明其已经采取一切合理措施并实施了所有尽职调查以避免相关违法犯罪行为的发生”，则可将此作为一项抗辩理由。值得注意的是，CJCOA 的一些条款规定了举证责任倒置在某些情况下的适用以及腐败意图的推定，包括向相关官员提供礼物或其他好处，而该等官员的职责是执行与涉嫌行贿人有利益关系的职能（例如授予投标或许可），或者在某些情况下涉及政治捐赠。如果受限于爱尔兰管辖的一方（例如某一爱尔兰公司或公民）已经实施的行为构成 CJCOA 下以及行为发生地法律下规定的违法犯罪，则 CJCOA 对该等行为具有域外适用效力。在新法通过的同时，爱尔兰国家警察部门于 2017 年成立了一个新的反腐败小组。

7. Developments in China and other countries in Asia include reforms to anti-corruption laws and increased enforcement in certain countries.
中国以及亚洲其他国家的发展动态包括反腐败法律的改革以及某些国家不断加强的执法行动。

Developments in Chinese law
中国法律的发展动态

In 2018, the Chinese government undertook the largest reorganization in a generation. Among the changes was the creation of a “super” enforcement agency, the National Supervision Commission (“NSC”), which targets public-sector officials, including those affiliated with state-owned enterprises. While the NSC does not have direct enforcement jurisdiction over private citizens, we have seen indirect impacts as it seeks evidence from those companies, including through its powers to interrogate, detain, and seize or freeze assets.

2018 年，中国政府进行了二三十年以来最大的改革。变革之一是针对包括国有企业相关人员在内的公共部门官员，创建了一个“超级”执法机构国家监察委员会（下称“国家监察委”）。虽然国家监察委对普通公民不具有直接的执法权，但是我们发现其将产生间接影响，因为国家监察委将从前述企业收集证据，包括运用其讯问、扣留以及查封或冻结资产的权力。

Amendments to the Anti-Unfair Competition Law also came into effect. The amendments expanded the scope of commercial bribery-related offenses, increased penalties, clarified vicarious liability rules, provided specific monetary penalties for obstructing an investigation, and enhanced the investigative powers of the enforcement agency, the State Administration of Market Regulation. China also amended its Criminal Procedure Law to codify rules encouraging cooperation with government investigations, align with the new national supervision system, and introduce trials in absentia for certain crimes, including bribery and corruption.

修订后的反不正当竞争法也已生效。此次修订扩大了商业贿赂相关犯罪的范围，加重了处罚，阐明了替代责任规则，就妨碍调查的行为规定了具体的罚款，并赋予执法部门即国家市场监督管理总局更大的调查权力。中国还修订了其刑事诉讼法，通过法律条文明确鼓励配合政府调查的行为。修改后的刑事诉讼法与新的国家监察体系保持一致，并就贪污贿赂犯罪案件等某些犯罪案件引入了缺席审判制度。

Finally, China enacted an International Criminal Judicial Assistance Law that blocks China-based individuals and entities, including the China-based subsidiaries of non-Chinese companies, from disclosing evidence in China to criminal enforcement authorities outside of China in connection with a criminal matter, absent approval from the Chinese government.

最后，中国出台了一部国际刑事司法协助法，该法禁止中国个人和实体（包括外国公司的中国子公司）在未经中国政府批准的情况下就刑事案件向中国境外刑事执法部门披露中国境内的证据。

U.S. enforcement developments related to China
美国涉华执法行动的发展动态

In 2018, a significant percentage of corporate FCPA resolutions (6 of 17, or 35%) involved allegations of improper conduct related to China. This is consistent with recent trends from 2011 to 2018; as 31% of all corporate FCPA cases from 2011 to the present have involved improper conduct in part or in full in China.

2018 年解决的公司 FCPA 案件中有很大比例（17 起中有 6 起，约 35%）涉及与中国相关的不当行为指控。这与 2011 年至 2018 年的近年趋势一致；因为 2011 年至今的所有公司 FCPA 案件中，有 31%的案件，部分或全部涉及在中国发生的不当行为。

In November 2018, DOJ announced a China Initiative comprised of ten goals, one of which is to "[i]dentify Foreign Corrupt Practices Act (FCPA) cases involving Chinese companies that compete with American businesses." Further details were not provided.

2018 年 11 月，司法部宣布了一项包含十大目标的中国计划，目标之一是"确定与美国企业相竞争的中国公司所牵涉的反海外腐败法（FCPA）案件"。进一步信息尚未提供。

Other developments in Asia
亚洲其他发展动态

- **Malaysia** elected a new government that promised to take a firmer stance against corruption—on January 29, 2019, the Prime Minister announced a five-year plan to curb corruption in the country. The Malaysia Anti-Corruption Commission also became more active, announcing new investigations in a range of industries, including several related to the 1MDB scandal. In addition, Malaysia released guidelines for commercial organizations to show that they have "adequate procedures" as a defense against corporate liability for failure to prevent corruption, which will take effect in 2020.

  马来西亚选举了一个新政府，该新政府承诺对腐败采取更为坚定的立场，2019 年 1 月 29 日，总理宣布了一个旨在制止该国腐败行为的五年计划。同时，马来西亚反腐败委员会采取了更加积极的态度，其宣布对多个行业开展新的调查，其中包括涉及一马发展有限公司丑闻的数项调查。此外，马来西亚发布了相关指南，以供商业组织证明其具备"充分程序"，以此作为对未能防止腐败而需承担公司责任的一项抗辩理由，该等指南将于 2020 年生效。

- **Korea** continued its aggressive enforcement of anti-corruption laws, marked by several high-profile enforcement actions and the implementation of an expansive new anti-corruption law. In 2018, two former South Korea presidents were sentenced to jail for corruption, and senior members of Korean companies were sentenced to prison time for improper payments. Pharmaceutical companies have been a particular target of enforcement efforts, with an increasing number of corporate investigations (both internal and government-driven) having been prompted by whistleblower reports.

  韩国继续积极开展反腐败执法，其中具有标志意义的是数起引人瞩目的执法行动以及一部新的扩大性反腐败法律的实施。2018 年，韩国两位前总统因腐败行为被判入狱，且韩国数家公司的高层因不当付款被判监禁。药企尤其成了执法行动打击的对象，越来越多的公司调查（包括内部调查和政府调查）起因于举报。

- **India** passed notable amendments to its Prevention of Corruption Act. Specifically, while the Prevention of Corruption Act had previously only included offenses related to the *receipt* of bribes by government officials (and it was only possible to prosecute the giver of a bribe as an abettor of such an offense), amendments passed in July 2018 made it an offense for an individual or company to pay a bribe to a government official. A company may now be found guilty of bribery if an associated person is found to have bribed a public official in return for business or any other commercial advantage. Similar to the UK Bribery Act, a defense is available where the company is able to establish that it had "adequate procedures" in place to prevent associated persons from engaging in bribery. The Indian government is expected to issue compliance program guidelines in due course. India also cracked down on hidden beneficial ownership transactions ("*benami*") in which illicit funds are invested in property in another's name.

  印度通过了对其《预防腐败法》的令人瞩目的修订。具体而言，《预防腐败法》之前仅包括涉及政府官员*收受*贿赂的违法犯罪行为（且仅可能以该等违法犯罪行为之教唆犯的罪名起诉行贿人员），2018 年 7 月通过的修订规定个人或公司向政府官员行贿属于违法犯罪。如果公司的关联人士被认定向公职人员行贿以换取业务或任何其他商业利益，则依照修订后的《预防腐败法》，公司可能被判行贿罪。类似于《英国反贿赂法》的规定，如果公司能够证明其具备防止关联人士参与贿赂的适当"充分程序"，则可将此作为一项抗辩理由。预计印度政府将通过正当程序颁布合规计划指南。印度还打击了隐藏的实益所有权交易（下称"*benami*"），该等交易以他人名义将非法资金投资于资产中。

- **Indonesia's** Corruption Eradication Commission ("KPK") continued aggressive enforcement, primarily against government officials believed to have taken bribes. As part of the country's efforts to increase transparency of beneficial ownership, legal entities in Indonesia must declare the identity of, and provide information regarding, beneficial owners.

  印度尼西亚的肃贪委员会（下称"KPK"）继续积极开展执法行动，执法对象主要是确信受贿的政府官员。作为该国提高实益所有权透明度之努力的一部分，印度尼西亚的法律实体必须披露实益所有权人的身份并提供相关信息。

- In **Japan**, a new plea bargaining system took effect, and Japanese prosecutors filed charges against a Japanese company and its employees for bribes paid in Thailand. Probes into corruption in the education ministry also are ongoing.

  在**日本**，一项新的认罪交易制度已经生效，且日本检察官已经针对一家日本公司及其雇员在泰国行贿的行为提起指控。同时，针对教育部的腐败调查仍在进行中。

- In **Vietnam**, amendments to the Penal Code that criminalize commercial bribery above VND 2 million (approximately USD $85) and bribery of non-Vietnamese public officials came into effect in 2018. However, the Penal Code remains applicable only to individuals, not corporate entities.

  在**越南**，修订后的刑法典已经于 2018 年生效，其规定，超过 200 万越南盾（约合 85 美元）的商业贿赂以及对非越南公职人员行贿均属于违法犯罪行为。但是，该刑法典仍然仅适用于个人，而不适用于公司实体。

8. Signs point to increasing international and domestic scrutiny of conduct in Africa. 有迹象表明，国内外对非洲相关行为的审查日益趋严。

International investigations and enforcement actions
国际调查和执法行动

As in past years, several U.S. and UK investigations related to alleged misconduct in Africa are ongoing, and certain resolved matters involved conduct in Africa, including the SEC's settlement with Kinross Gold (which involved issues in Mauritania and Ghana) and the recent conviction of Patrick Ho (which involved payments on behalf of a Chinese energy company in Chad and Uganda). Notable recent activity focused on Africa includes FCPA, money laundering, and wire fraud charges filed in January 2019 against the former Finance Minister of Mozambique and three former Credit Suisse employees in connection with an alleged bribery and kickback scheme related to government-guaranteed loans to fund maritime projects. In addition, in July 2018, DOJ issued a subpoena to a subsidiary of Swiss-headquartered commodity trading and mining firm Glencore regarding its business in Nigeria, the Democratic Republic of the Congo ("DRC"), and Venezuela. The subpoena followed Glencore's decision to settle a royalty dispute with Dan Gertler, who was recently sanctioned under the Global Magnitsky Sanctions program in connection with corruption allegations related to his business activities in the DRC.

同以往几年一样，美国和英国就发生于非洲的不当行为指控发起的数起调查仍在进行中，同时某些已解决案件也涉及在非洲实施的行为，包括证交会与 Kinross 的和解（涉及在毛里塔尼亚和加纳的问题）以及最近对何志平的定罪（涉及代表一家中国能源公司在乍得和乌干达的付款）。近期针对非洲的引人瞩目的行动包括 2019 年 1 月针对莫桑比克前财政部长以及瑞士信贷三名前雇员提起的 FCPA、洗钱和电信诈骗指控，该指控与旨在向数个海事项目供资的政府担保贷款牵涉的贿赂和回扣阴谋指控相关。此外，2018 年 7 月，司法部就总部位于瑞士的商品交易和矿业公司嘉能可（Glencore）的一家子公司在尼日利亚、刚果民主共和国（下称"刚果"）和委内瑞拉的业务向该子公司发出传票。该传票签发于嘉能可决定与 Dan Gertler 和解一项关于许可费的纠纷之后，Dan Gertler 最近因其在刚果的业务活动牵涉的腐败指控遭受全球马格尼茨基制裁计划下的制裁。

Recent comments from the U.S. government suggest that the FCPA and other enforcement tools may be used strategically to bring actions against foreign companies and SOEs operating in Africa—particularly those with ties to China and Russia. As noted above, one of the goals cited in DOJ's China Initiative was to identify FCPA cases involving Chinese companies that compete with American businesses. Further, in December 2018, National Security Advisor Ambassador John Bolton delivered comments describing the Trump administration's Africa Strategy, in which he referenced "predatory practices" by China and Russia in Africa, including "deliberately and aggressively targeting their investments in the region to gain a competitive advantage over the United States." Bolton accused both countries of engaging in corrupt practices, stating that China's "investment ventures are riddled with corruption" and that Russia "advances its political and economic relationships with little regard for the rule of law or accountable and transparent governance." Though establishing FCPA jurisdiction over Chinese and Russian companies operating in Africa may prove challenging, the government might also seek to use other tools discussed above (i.e., anti-money laundering laws or sanctions) to target corrupt practices on the continent.

美国政府近期发表的意见暗示，美国可能战略性地使用 FCPA 和其他执法工具针对在非洲开展业务的外国公司和国有企业开展行动，尤其是与中国和俄罗斯有关的公司和企业。如上所述，司法部的中国计划包含的其中一个目标是，确定与美国企业相竞争的中国公司所牵涉的 FCPA 案件。此外，在 2018 年 12 月，国家安全顾问 John Bolton 大使发表意见，描述了特朗普政府的非洲策略，他提到中国和俄罗斯在非洲的"掠夺性操作"，包括"有预谋及侵略性地在该区域进行投资以获得相较美国而言的竞争优势"。Bolton 指责两国参与腐败行为，称中国的"投资项目充斥着腐败"，而俄罗斯"推进其政治和经济关系时完全无视法治也无视治理过程中的问责和透明度原则"。虽然针对在非洲开展业务的中国和俄罗斯公司建立 FCPA 管辖可能具有挑战性，但是政府也可能寻求使用上述其他工具（即反洗钱法律或制裁）打击非洲大陆上的腐败问题。

Increased enforcement activity in countries that have not historically been active enforcers of anti-corruption laws is also likely to lead to heightened scrutiny in Africa. France's arrival on the international enforcement scene is likely to be notable in that regard, given the large number of French companies operating in Francophone Africa. As we have previously described, one of the first high-profile corruption investigations by the French authorities following the December 2016 passage of *Loi Sapin II* targeted French logistics firm Groupe Bolloré in connection with alleged misconduct in Guinea and Togo. In an unrelated matter, the Guinean Minister of Agriculture and several senior executives of the agro-industrial firm Socfin, in which Groupe Bolloré holds a 38.8% interest, were found guilty of corruption by a Belgian court. Canada is another country to watch—particularly in the extractives sector. In December 2018, the Ontario Securities Commission entered into a CAD $30 million settlement with Glencore subsidiary Katanga Mining Limited (and related settlements with eight of its directors and officers), including on the basis that Katanga failed to disclose to investors the elevated corruption risks in the DRC and the nature and extent of the company's reliance on individuals and entities associated with Dan Gertler.

以往在反腐败执法方面不太活跃的某些国家逐渐增加其执法行动，这很可能导致加强对涉非行为的审查。法国加入国际执法队列可能带来尤为明显的影响，因为有很多法国公司在非洲以法语为主要语言的地区开展业务。如我们之前所描述的，2016 年 12 月 Loi Sapin II 通过后，法国当局开展的首批令人瞩目的腐败调查之一即是就法国物流公司 Groupe Bolloré 被控在几内亚和多哥实施的不当行为针对 Groupe Bolloré 开展调查。在一起不相关的案件中，几内亚农业部长以及 Groupe Bolloré 持有 38.8%权益的工农业公司 Socfin 的数名高管被比利时一家法院判处腐败罪。加拿大是另一个值得关注的国家——尤其是采掘行业。2018 年 12 月，安大略省证券委员会与嘉能可子公司 Katanga Mining Limited 达成了一起价值 3000 万加拿大元的和解（并与其 8 名董事和高管达成相关和解），包括基于 Katanga 未向投资者披露刚果逐渐增加的腐败风险以及公司对与 Dan Gertler 相关的个人和实体的依赖性质及程度。

Multilateral development bank enforcement
多边发展银行执法

As we have previously discussed, we expect that the multilateral development banks will continue to play an important enforcement role in Africa. The World Bank, which has aggressively enforced its sanctions and debarment procedures for several years, initiated 28 investigations in Africa in its 2018 financial year alone, representing 41% of all new investigations. Notable World Bank settlements in 2018 included a settlement with Slovenian firm Flycom, in which an 18-month debarment was imposed in connection with allegations of corrupt practices on a power project in the DRC, and a settlement with Africa Railways Logistics Limited (and related entities) in which a 2-year debarment was imposed based on an employee's attempt to improperly influence customs and port clearance processes in Kenya. The African Development Bank has also become increasingly active in pursuing its own sanctions and debarment proceedings, in addition to cross-debarring parties debarred by the World Bank and other multilateral development banks.

如我们以往所讨论的，我们预计多边发展银行将继续在涉非执法行动中扮演重要角色。多年以来，世界银行一直积极实施其制裁和取消资格程序，其单单在 2018 财年就在非洲启动了 28 项调查，占全部新调查的 41%。2018 年世界银行达成的令人瞩目的和解包括与斯洛文尼亚公司 Flycom 的和解，在该和解中，世行就 Flycom 被控在刚果实施的关于一电力项目的腐败行为对该公司施加了 18 个月的取消资格制裁，以及包括与 Africa Railways Logistics Limited（及相关实体）达成的一项和解，在该和解中，世行基于该公司的一名员工试图不当影响肯尼亚的海关和港口清关程序对该公司施加了 2 年的取消资格制裁。针对被世界银行和其他多边发展银行取消资格的各方，非洲开发银行亦参与对该等各方交叉取消资格，同时，其在自行实施制裁和取消资格程序方面也变得越来越积极。

Domestic efforts to address corruption
打击腐败的国内努力

Finally, there has been a proliferation of anti-corruption campaigns and efforts across the African continent, with a number of current African leaders—including, for example, the presidents of Nigeria, Tanzania, South Africa, Angola, Zimbabwe, and Ghana—having put pledges to fight corruption at the center of their political campaigns and policies. Though such campaigns are often viewed cynically as consisting of ineffective rhetoric (or being used as a tool to attack members of political opposition parties) a number of concrete steps have been taken to identify and address corruption issues. For example:

最后，非洲大陆上的反腐败运动和努力也在迅速扩大，包括尼日利亚、坦桑尼亚、南非、安哥拉、津巴布韦和加纳等国总统在内的许多非洲现任领导人已经承诺将反腐作为他们政治运动和政策的核心。虽然通常认为该等运动具有讽刺性，因为其包含华而不实的说辞（或者被当做对付政治对手的工具），但是，相关国家已经采取许多具体措施查处腐败问题。例如：

- The African Union dubbed 2018 the “African Anti-Corruption Year” and made anti-corruption efforts a focal point for the year, including in its mid-year summit and through a training delivered to the heads of several anti-corruption agencies in December on how to conduct corruption risk assessments in the public sector.

  非洲联盟将 2018 年称作“非洲反腐年度”，并将反腐败努力作为该年度的焦点，包括体现在其召开的年中峰会以及 12 月就如何开展公共部门腐败风险评估为数个反腐败部门的负责人提供的培训。

- Governments in **Nigeria**, **Tanzania**, and elsewhere in Africa have been at the forefront of adopting new technologies such as blockchain to curb corruption and fraud in the public sector.

  尼日利亚、**坦桑尼亚**以及非洲其他地区的政府已经成为利用区块链等新技术打击公共部门腐败和欺诈的先锋。

- In **South Africa**, the “State Capture” investigation, which is focused on allegations of widespread corruption and conflicts of interest in the government of former president Jacob Zuma, by a Judicial Commission of Inquiry continues, with reports indicating that U.S. and UK authorities have opened related investigations into assets and individuals associated with the Gupta family.

  在**南非**，由某个司法调查委员会开展的“国家捕获”调查仍在继续，其主要涉及对前总统 Jacob Zuma 政府的大范围腐败和利益冲突的指控，相关报告称美国和英国当局已经就涉及 Gupta 家族的资产和个人启动相关调查。

- In **Nigeria**, "Special Courts" were designated to try corruption and financial crime cases. In June 2018, the National Judicial Council announced that in six months, those courts had delivered 324 judgments, struck out 12 cases, and reserved 62 cases for judgment.

  在**尼日利亚**，"专门法院"经指定，负责审理腐败和金融犯罪案件。2018 年 6 月，国家司法委员会宣布前述法院在六个月内作出了 324 起判决，驳回了 12 起案件，并保留了 62 起案件等待判决。

- In **Angola**, President João Lourenço's anti-corruption drive has targeted family members and close associates of former president Jose Eduardo dos Santos, including his daughter, who was dismissed from her position as the head of the state-owned oil company, Sonangol, and his son, who formerly headed Angola's sovereign wealth fund and was arrested in September on money laundering, corruption, and other charges.

  在**安哥拉**，João Lourenço 总统的反腐败运动将矛头指向了前总统 Jose Eduardo dos Santos 的家族成员和亲信，包括 Jose Eduardo dos Santos 之女，其被解除国有石油公司 Sonangol 负责人的职务，以及 Jose Eduardo dos Santos 之子，其之前是安哥拉主权财富基金的负责人，九月份因洗钱、腐败和其他指控被逮捕。

- A number of arrests were made in **Kenya**, including of officials of the China Road and Bridge Corporation in connection with allegations that they attempted to bribe fraud investigators to influence an ongoing investigation.

  肯尼亚进行了多起逮捕，其中包括就中国路桥工程有限责任公司的高级管理人员被控试图向欺诈调查员行贿以影响一项正在进行的调查，逮捕了中国路桥工程有限责任公司的该等高级管理人员。

- In **Rwanda**, a new anti-corruption law was introduced, which aims at preventing and punishing corruption in public bodies, private entities, and international organizations operating in Rwanda. The new law also created protections from criminal liability for whistleblowers who inform the authorities of illegal benefits they have given or received.

  卢旺达颁布了一部新的反腐败法律，旨在防止和处罚卢旺达的公共机构、私人实体以及国际组织发生的腐败行为。新法还规定，对于向权力机关举报其自己提供或收受非法利益的举报人，将保护该等举报人免于承担刑事责任。

- A new anti-corruption unit was established in **Uganda**.

  乌干达建立了一个新的反腐败部门。

9. U.S. and regional enforcement coupled with ongoing political transitions and legislative changes make Latin America a region to watch in 2019.
美国和区域的执法行动连同持续的政治过渡和立法变化，使得拉丁美洲成为 2019 年值得关注的一个区域

U.S. enforcement developments in Latin America
美国在拉丁美洲的执法动态

In 2018 U.S. authorities continued to investigate and prosecute companies and individuals based on alleged improper conduct in Latin America. Three of the seventeen corporate enforcement actions announced in 2018 (Petrobras, Eletrobras, Vantage Drilling) involved conduct in the region, and specifically Brazil. The Petrobras global resolution is the largest anti-corruption settlement in history even if the amounts to be paid to U.S. authorities only amount to about 170 million. In addition, over half of the FCPA enforcement actions against individuals in 2018 were related to conduct in Latin America. Based on public reporting, there are at least ten ongoing FCPA investigations involving conduct in Latin America, some of which likely will be resolved in 2019. In addition to the existing close relationship with Brazil, which has resulted in a large number of joint, multi-jurisdictional resolutions, cooperation between U.S. authorities and their counterparts in the region continues to strengthen, particularly with Colombia, Peru, and Argentina.

2018 年，美国权力机关继续基于相关公司和个人被控在拉丁美洲实施的不当行为调查和起诉该等公司和个人。2018 年宣布的十七起涉及公司的执法行动中有三起（针对 Petrobras、Eletrobras、Vantage Drilling）涉及在该区域（尤其是在巴西）实施的行为。Petrobras 全球和解是有史以来最大的反腐败和解，尽管应支付给美国权力机关的金额仅仅约为 1.7 亿美元。此外，2018 年针对个人提起的 FCPA 执法行动超过一半涉及在拉丁美洲实施的行为。根据公开报告，正在进行的 FCPA 调查中至少有 10 起涉及发生于拉丁美洲的行为，其中某些调查很可能将在 2019 年得到解决。除了目前与巴西保持密切合作关系（引发大量跨区域联合和解案件），美国权力机关还与其在拉丁美洲的合作部门（尤其是哥伦比亚、秘鲁及阿根廷的合作部门）继续加强合作。

Domestic efforts to address corruption
国内反腐败努力

Last year was momentous for Latin America, as the fight against corruption continued to drive political and legislative reform, as well as enforcement priorities in several countries. Elections in 2018 in the two largest economies in the region (Mexico and Brazil) brought new administrations to power that gained popular support in large part due to their promise to tackle corruption. In 2019, we expect Brazil to continue to vigorously investigate allegations deriving from Operation Car Wash (Operação Lava Jato). In the rest of the region, we can expect further efforts to untangle the web of corruption and graft uncovered by the 2016 Odebrecht settlement and to investigate other corruption schemes as the new anti-corruption laws that have recently mushroomed in the region continue to mature.

去年对于拉丁美洲而言，是具有重要意义的一年，因为反腐斗争继续推动政治和立法改革以及多个国家的执法重点。2018 年该区域最大两个经济体（墨西哥和巴西）的选举产生了新的掌权政府，新政府获得民众支持的很大原因是他们承诺打击腐败。2019 年，我们预计巴西将继续积极调查源于洗车行动（Operação Lava Jato）的指控。随着近期该区域不断出台的新的反腐败法律的持续完善，我们预计该区域的其他国家地区将进一步采取措施瓦解 2016 年 Odebrecht 和解揭露的贪腐网络以及调查其他腐败阴谋。

- In **Argentina**, Law 27.401 entered into force in March 2018. As we explained last year, Law 27.401 establishes the legal framework for criminal and administrative corporate liability for corruption offenses. The law provides that corporations can avoid or benefit from reduced penalties if they have, among other things, adequate anti-corruption controls in place, including a corporate integrity program. The law also makes this corporate integrity program a requirement for all companies with state contracts above a certain threshold. Guidelines for the establishment, implementation, and evaluation of corporate integrity programs were subsequently published by the government in October 2018. Last year also brought the so-called "notebooks" scandal in Argentina, which began when the chauffeur of a former Argentine public works official shared with a local newspaper eight notebooks containing details of alleged bribes paid by construction and energy companies to Argentine officials. Former President Cristina Fernández de Kirchner (now a senator) and other former Argentine government officials and high-profile individuals have been indicted in relation to this scandal. The "notebooks" investigation is likely to lead to investigations in the U.S. as cooperation between the two countries in anti-corruption enforcement matters strengthens.

  在**阿根廷**，法律 27.401 于 2018 年 3 月生效。正如我们去年所阐明的，法律 27.401 就腐败行为引起的公司刑事和行政责任制定了法律框架。该法规定，如果公司具备适当充分的反腐败控制制度等，包括企业诚信计划，则可对公司免于处罚或者减轻处罚。该法还将该企业诚信计划规定为所有公司参与国家合同的一个特定门槛要求。随后，政府于 2018 年 10 月颁布了关于建立、实施和评估企业诚信计划的指南。去年阿根廷还发生了所谓的"笔记本"丑闻，该丑闻的导火索是阿根廷一名前公共工程官员的私人司机向当地一家报纸披露的八本笔记本，该等笔记本包含建筑和能源公司被控向阿根廷官员行贿的细节。前总统 Cristina Fernández de Kirchner（现为一名参议员）、其他前阿根廷政府官员以及知名人士已经因这一丑闻被起诉。"笔记本"调查很可能引起美国境内的调查，因为两国在反腐败执法案件方面的合作日益加强。

- In **Brazil**, Operation Car Wash continued in full force and led to a number of new investigations and charges, including, among others, an investigation into possible bribes paid by construction firms in connection with federal highway concessions (*Operação Integração* I and II); an investigation into possible bribes paid by construction companies in connection with the bid for the construction of the Belo Monte Hydroelectric plant (*Operação Buona Fortuna*), an investigation into possible bribes paid by healthcare companies as part of a corruption and bid-rigging scheme for the sales of medical equipment to the state of Rio de Janeiro (*Operação Ressonância/Fatura Exposta*); an investigation into possible bribes paid to Petrobras employees and other officials in connection with the construction of Petrobras's new headquarters (*Operação Sem Fundos*); and an investigation into possible bribes paid by oil trading companies to Petrobras employees in exchange for favorable oil prices (*Operação Sem Limites*). On the political front, far-right Jair Bolsonaro was elected president after running on an anti-corruption campaign platform. Since taking office in January of this year, President Bolsonaro appointed Sérgio Moro, one of the head judges who presided over Operation Car Wash, as the new Minister of Justice and Public Security. Moro has since promoted an anti-crime bill that he plans to submit to the National Congress that proposes amendments to more than a dozen criminal statutes in Brazil in an effort to crack down on organized crime and corruption.

- 在**巴西**，洗车行动仍在如火如荼地进行，并引发了许多新的调查和指控，包括调查建筑公司就联邦公路特许业务可能实施的行贿（*Operação Integração* I 和 II）；调查建筑公司就 Belo Monte Hydroelectric 工厂的建设投标可能实施的行贿（*Operação Buona Fortuna*）；调查医疗保健公司为向里约热内卢州销售医疗器械可能实施的行贿（一起涉及腐败和围标阴谋的案件的一部分）（*Operação Ressonância/Fatura Exposta*）；调查可能就 Petrobras 新总部的建设向 Petrobras 员工及其他官员实施的行贿（*Operação Sem Fundos*）；以及调查石油贸易公司可能向 Petrobras 员工行贿以换取优惠的石油价格的行为（*Operação Sem Limites*），等等。在政治方面，极右派人士 Jair Bolsonaro 在以反腐败为竞选政纲参加选举后当选总统。在其于今年一月就任后，Bolsonaro 总统任命 Sérgio Moro 担任新的司法与公共安全部部长，Sérgio Moro 曾是主持"洗车行动"的大法官之一。上任之后，Moro 开始推进制定一部打击犯罪的法案并计划将其提交给国会，该法案提议修订巴西超过十二部的刑事法律，目的在于打击有组织的犯罪和腐败行为。

- **Colombia** has been trying to gain traction in pursuing Odebrecht-related investigations against a number of companies and individuals. In a web of strange events, two key witnesses in the Odebrecht bribery scheme were found dead late last year. Allegations involved Grupo Aval, the country's largest financial conglomerate, in connection with a highway construction project in which its subsidiary joined Odebrecht in the Ruta del Sol 2 consortium. Grupo Aval disclosed in a securities filing in December that it had received an inquiry from DOJ involving this project. Also in December 2018, a regional court in Colombia imposed a fine of approximately USD $250 million on the consortium and banned its members from participating in Colombian state contracts for ten years. Colombia also saw enforcement developments unrelated to Odebrecht. In April 2018, Colombia's *Superintendencia de Sociedades* (the Superintendent for Corporate Entities, known as "*Supersociedades*") reported that 17 companies were under investigation for transnational bribery. And in July 2018, *Supersociedades* fined a company for the first time for bribes paid to foreign officials. The fine totaled approximately USD $1.7 million and was based on the company's alleged bribes to officials in Ecuador in exchange for securing public contracts. In March 2018, *Supersociedades* also for the first time fined a company approximately USD $55,000 for obstructing a bribery investigation when it refused to produce electronic data.

  哥伦比亚一直努力在针对许多公司和个人开展的关于 Odebrecht 的调查中获得更多的回响。在一些诡异事件中，Odebrecht 贿赂阴谋中的两个关键证人于去年年底被发现身亡。Grupo Aval 是哥伦比亚最大的金融集团，其子公司在一个公路建设项目中与 Odebrecht 一起加入了 Ruta del Sol 2 财团，Grupo Aval 因此卷入数项指控。Grupo Aval 在 12 月份提交给证券机构的一份文件中披露其已经收到司法部关于此项目的询问。同样在 2018 年 12 月，哥伦比亚的一家地区法院判决该财团支付大约 2.5 亿美元的罚款，并禁止该财团的成员在未来十年参与哥伦比亚的国家合同项目。哥伦比亚还开展了多个与 Odebrecht 无关的执法行动。2018 年 4 月，哥伦比亚的 *Superintendencia de Sociedades*（公司实体监管办公室，称作"*Supersociedades*"）报告称 17 家公司正因跨国贿赂遭受调查。2018 年 7 月，*Supersociedades* 首次就行贿外国公职人员而处罚公司。罚款总额约为 170 万美元，罚款原因为公司被控向厄瓜多尔的官员行贿以获得公共合同。2018 年 3 月，*Supersociedades* 还首次因一公司拒绝提供电子数据而以妨碍贿赂调查之名对该公司罚款约 55,000 美元。

- In Mexico, leftist Andrés Manuel López Obrador, known as "AMLO," became president on December 1, 2018, after having run a successful campaign on a strong anti-corruption platform. AMLO and his party will oversee the country's long-awaited transition to a new, independent Attorney General's Office (*Fiscalía General de la República*), which will include a specialized anti-corruption prosecutor's office. The anti-corruption prosecutor is expected to be appointed this year. Another important development in 2018 was the signing of the United-States-Mexico-Canada Agreement ("USMCA"), which includes a chapter dedicated solely to anti-corruption in which the countries agreed to cooperate on anti-corruption matters and work to effectively enforce their respective anti-corruption laws. However, the USMCA has yet to be approved by lawmakers in the United States, Mexico, and Canada.

  在**墨西哥**，左派人士 Andrés Manuel López Obrador（下称"AMLO"）在以大力反腐为竞选政纲成功当选后于 2018 年 12 月 1 日就任总统。AMLO 及其政党将监督该国期盼已久的、向新的独立司法部（*Fiscalía General de la República*）的过渡，新的独立司法部将包括一个专门反腐败的检察官办公室。预计今年将任命反腐败检察官。2018 年另一个重大发展是美国-墨西哥-加拿大协议（下称"USMCA"）的签订，该协议的其中一章专门为打击腐败而制定。协议缔约国同意在反腐败案件中互相合作并有效执行他们各自的反腐败法律。但是，USMCA 尚待美国、墨西哥和加拿大的立法者批准。

- In **Peru**, Law 30424 entered into force in January 2018, creating corporate liability for criminal offenses such as transnational bribery of foreign officials, money laundering, and terrorist financing. Corporations now face both fines and disqualification penalties ranging from suspension to dissolution. The law also requires companies to develop and implement a compliance program to prevent the commission of the various crimes covered by the law. Companies that do not develop this required compliance program could face criminal liability. Peruvian authorities also continued to pursue Odebrecht-related investigations, with the strong support of the public, including against a number of high-profile politicians. Former President Pedro Pablo Kuczynski was forced to resign amid a corruption scandal revealing his links to Odebrecht, and in January of this year, the attorney general of Peru was forced to resign over public outrage over his interference with the ongoing Odebrecht investigations.

  在**秘鲁**，法律 30424 于 2018 年 1 月生效，其规定，对于跨国贿赂外国公职人员、洗钱和恐怖融资等刑事犯罪，涉案公司需承担法律责任。依照现行法律，涉案公司面临罚款以及从停业到解散的取消资格处罚。该法还要求公司制定和实施合规计划以预防发生法律规定的各种犯罪。如果公司未按要求制定此等合规计划，则可能面临刑事责任。秘鲁的权力机关同时继续开展关于 Odebrecht 的调查并获得了公众的强烈支持，调查对象包括许多备受关注的政客。前总统 Pedro Pablo Kuczynski 在一起揭示其与 Odebrecht 之联系的腐败丑闻中被迫下台，此外在今年 1 月，秘鲁的司法部长因其干涉持续进行的 Odebrecht 调查引起民愤而被迫辞职。

- In **Ecuador**, the Criminal Code (Article 280) was amended in February 2018 to incorporate a provision that subjects corporations to fines, dissolution, and liquidation if convicted of public bribery or influence peddling. These penalties have significant implications for companies with public concessions in Ecuador, as dissolution of a company would require any concession to revert back to the state. Additionally, in September 2018, a new law was proposed in Ecuador to combat corruption, which would, among other things, simplify the recovery of illicit proceeds from corrupt individuals and protect whistleblowers.

厄瓜多尔于 2018 年 2 月修订了其刑法典（第 280 条），新增一项规定，即如果公司被判犯有行贿公职人员或涉及贩卖权力的罪行，则公司将面临罚款、解散或清算的处罚。这些处罚措施对在厄瓜多尔享受公共减免优惠的公司具有重大影响，因为一旦公司解散，将需要向国家返还任何减免优惠。此外，2018 年 9 月，厄瓜多尔提议了一部打击腐败的新法，新法将使追缴腐败分子的非法所得变得更加简单，并且将为举报人提供保护，等等。

- Anti-corruption bodies in **Guatemala** and **Honduras** also continued to pursue investigations, though not without significant roadblocks. In September 2018, after the announcement of an investigation against the President of Guatemala, the President banned the head of the United Nations-backed International Commission Against Impunity in Guatemala ("CICIG") from entering the country and declined to renew CICIG's mandate past its September 2019 expiration date. In December 2018, Guatemala's Foreign Ministry also revoked visas and immunity for 11 CICIG investigators and two of their relatives. Likewise, in Honduras, shortly after the Organization of American State's Mission to Support the Fight Against Corruption and Impunity in Honduras ("MACCIH") announced that numerous legislators were under investigation for an alleged embezzlement scheme, the Congress in Honduras passed a law blocking the investigation until a fiscal tribunal completed an audit of funds received by members of congress. Then in May 2018, the Honduran Supreme Court issued a ruling that could undermine the work of the special investigative unit within the Honduran Public Ministry that works with MACCIH.

  尽管阻碍重重，但是**危地马拉**和**洪都拉斯**的反腐败机构也仍在继续开展调查。2018 年 9 月，在宣布针对危地马拉总统开展调查后，总统即禁止联合国支持的消除危地马拉国内有罪不罚现象国际委员会（下称"CICIG"）的负责人进入该国，并拒绝在 CICIG 的授权于 2019 年 9 月到期后更新该等授权。2018 年 12 月，危地马拉的外交部也撤销了 11 名 CICIG 调查员及他们的其中两名亲属的签证和豁免权。同样地，在洪都拉斯，在美洲国家组织支持洪都拉斯惩治腐败与有罪不罚行动团（下称"MACCIH"）宣布许多立法者因被控参与贪污阴谋而正遭受调查后不久，洪都拉斯国会通过了一部法律禁止该等调查，直至一个财政法庭完成对国会成员获得之资金的审查。然后在 2018 年 5 月，洪都拉斯最高法院作出了一项判决，该判决可能损害与 MACCIH 合作的洪都拉斯公共部特别调查组的工作。

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