2021 Year in Review: Top Anti-Corruption Enforcement and Compliance Trends and Developments

Winter 2022

Anti-corruption/FCPA

What You Need to Know:

1. The U.S. Department of Justice ("DOJ" or the "Department") and the U.S. Securities and Exchange Commission ("SEC") have left no doubt that corporate enforcement is a top priority for both agencies. But how these priorities translate to U.S. anti-corruption enforcement remains to be seen, even as a DOJ official has promised "some significant resolutions in the next year." At a minimum, we expect DOJ and the SEC to continue to invest heavily in anti-corruption investigations and enforcement, and we anticipate that companies, particularly those with a history of prior criminal, civil, or administrative resolutions, will be under a microscope at the time of resolution. Policy changes at DOJ also likely will result in a renewed emphasis on voluntary disclosure, cooperation, and remediation, with potential guilty pleas, higher monetary sanctions, and outside compliance monitors all hanging in the balance for recidivists and non-recidivists alike. Ultimately, time will tell how the tough rhetoric on corporate crime manifests in anti-corruption enforcement, but companies and their counsel should brace for a more difficult road ahead with both agencies.

2. The Biden Administration has prioritized anti-corruption deterrence and enforcement as a national security interest and has formulated a whole-of-government approach to combatting corruption. As a result, top-down pressure on domestic regulators to adopt tough anti-corruption enforcement agendas is at an all-time high, bolstered by new resources.

3. The last year highlighted that the risk of government enforcement is not the only risk companies must proactively manage during an investigation or following a resolution, with several companies finding themselves subject to civil claims from alleged victims of corrupt conduct and from shareholders.

4. International enforcement saw mixed results at the local level in the past year, with Europe and Asia achieving the greatest successes. By contrast, enforcement authorities in Latin America and Africa have continued to face various challenges, including resourcing issues and problems of political will.

5. In light of the broader trend of aggressive enforcement rhetoric, companies must continue to invest in proactively enhancing their compliance programs to prevent misconduct and prepare for government scrutiny.

Overview

Measured by statistics alone, one might think that the U.S. government is cooling on anti-corruption enforcement. With only four corporate Foreign Corrupt Practices Act ("FCPA") resolutions and the fewest number of new bribery cases opened by the SEC in a decade, 2021 was not a year of record-breaking settlements or unprecedented resolution statistics. But statistics tell only part of the story, and a senior DOJ official recently foreshadowed "significant [anti-corruption] resolutions in the next year." More broadly, the government is undertaking efforts to broaden and refresh the pipeline of new investigations, which a senior DOJ official recently called "robust" at a conference, and arming itself with new tools and expanded resources to combat corporate misconduct. At DOJ, policies recently announced by Deputy Attorney General Lisa Monaco put white collar enforcement at the very top of the Department's priority list and expand the Department's authority and leverage at every stage of the enforcement process, from investigation to resolution and beyond. A resource surge at DOJ suggests that these new initiatives have real teeth. The SEC, for its part, also has been bullish in public statements about its enforcement agenda. And notwithstanding the ongoing COVID-19 pandemic, enforcement officials have said that changes to their traditional working environments, including remote work, are no longer hampering enforcement efforts.

Topping these developments, the Biden Administration has issued a number of new policies—ranging from President Biden's designation of anti-corruption as a national security interest (the "National Security Memo"), to the subsequent 38-page U.S. Strategy on Countering Corruption (the "SCC") detailing the Administration's high-level anti-corruption plan—aimed squarely at combatting corporate crime and corruption and making clear that it intends to pursue a robust enforcement agenda. Internationally, Europe and Asia have pressed ahead with strengthened enforcement agendas. While anti-corruption enforcement authorities in Latin America and Africa have faced various challenges over the last year, all indications are that these two regions will be a priority for U.S. enforcers in the years ahead.

Taken together, these signs all point in one direction: DOJ's and the SEC's focus on and investment in corporate enforcement is on the rise; resolutions in U.S. enforcement actions may become more severe, particularly for companies with a history of prior criminal, civil, or administrative resolutions; and companies will need to invest (or continue to invest) in robust, meaningful, and measurable compliance program enhancements, including pressure-testing existing programs through program assessments to gain comfort around their efficacy.

Below we cover the top anti-corruption enforcement trends from 2021, both domestically and internationally. This linked chart summarizes the FCPA corporate enforcement actions from the past year.

DOJ (and the SEC) Is Strongly Signaling Pursuit of an Aggressive and Expansive Enforcement Agenda, with Enhanced Tools Supporting Every Aspect of the Investigation and Enforcement Lifecycle

Over the past year, and at an increasing pace over the last six months, particularly with policy changes announced by Deputy Attorney General Lisa Monaco, DOJ has broadcast an aggressive and expansive push to pursue and punish white collar criminal offenders. At the policy level, DOJ is furnishing itself with new tools to increase pressure on companies, particularly "recidivist" companies (those with a history of prior criminal, civil, or administrative resolutions), and individuals at every stage of an investigation's lifecycle—from identifying misconduct, to investigating it, to demanding enhanced cooperation during ongoing investigations, to increasing its leverage at the time of resolution, to applying enhanced obligations and greater scrutiny of companies in the post-settlement phase. SEC Chair Gary Gensler has indicated that he views DOJ's policy changes as consistent with his views on how to handle corporate offenders.

Looking ahead, enforcement battles are likely to be fought on an increasingly steep hill, even if the particular effect of tough rhetoric on anti-corruption enforcement activity remains to be seen. However, the degree to which the government's tough-on-corporate-crime stance and new policy-based tools will affect the outcomes that companies can achieve in enforcement actions will likely depend, in significant part, on how meaningfully they have invested in compliance both before and throughout the investigation and enforcement action lifecycle. Now is the time to redouble efforts to develop and test compliance programs so that companies can best position themselves to prevent wrongdoing in the first instance and defend themselves should they find themselves in DOJ's or the SEC's crosshairs.

Identifying Investigation Targets: The Pursuit of New Cases and an Emphasis on a Wider Range of Investigation Targets

DOJ has invested in resources and tools to help bring in more criminal cases from a wider variety of sources. Beginning with "how" DOJ sniffs out leads, as noted recently by the Assistant Chief of DOJ's FCPA Unit, the Department is placing particular emphasis on reaching beyond its own walls to foster coordination at all levels of government—both domestically and internationally—to identify wrongdoing more effectively. Another senior DOJ official also recently noted at a conference that prosecutors are building cases utilizing new investigative techniques, such as "continuing to find ways to use data from across the government to help us identify places to focus [our] energy," including "in the FCPA space." These efforts at DOJ build upon a 25% spike in FCPA cases reported to the SEC's whistleblower program in 2021, as compared to 2020, as well as a surge in tips that may follow the record payouts through the overall program in 2021—topping all previous years combined.

In terms of "who" DOJ pursues, although companies have traditionally been the most visible targets of the Department's anti-corruption enforcement efforts, a number of other targets may be increasingly in DOJ's focus. First and foremost, as we discussed in a recent alert, DOJ officials have made clear that *individual* wrongdoers who commit or facilitate corporate crimes will be a priority in the years to come. As stated by the Deputy Attorney General, "it is unambiguously this department's first priority in corporate criminal matters to prosecute the individuals who commit and profit from corporate malfeasance." Another DOJ official from the Criminal Division underscored this same point during an American Bar Association panel, adding that prosecuting individuals alongside corporations improves companies' compliance and reduces recidivism.

In addition to going after individuals and companies that *offer* bribes, the government has continued to pursue enforcement against the officials who *receive* them, as we covered last year and in a previous alert. For instance, in May 2021, DOJ's FCPA Unit charged three Americans and two senior Bolivian government officials for a bribery conspiracy related to weapons contracts. Similarly, five individuals were charged in a scheme to bribe Venezuelan officials to obtain contracts with a state-owned food and medicine distribution program, including the former Venezuelan governor who received bribes and facilitated government contracts. Prosecutors used anti-money laundering ("AML") statutes in these enforcement actions, a trend we discuss further below. DOJ may soon have available to it a new tool in the form of legislation criminalizing the "demand side of bribery," or receiving bribes, being pursued by the bipartisan Congressional Caucus against Foreign Corruption and Kleptocracy announced in June. An enhanced focus on kleptocrats could prove to be a fruitful source for leads against companies and other individuals, reprising the concept of a hub-and-spoke investigation, with corrupt bribe recipients serving as the hub.

Beyond targeting bribe payers and recipients, the Department is also taking a closer look at other players in the bribery chain—specifically, corporate gatekeepers such as officers, directors, lawyers, and auditors. For instance, the then-Acting United States Attorney for the Eastern District of New York stated that his office is "committed to the prosecution of corrupt gatekeepers, including officers and directors of public companies, who . . . use the United States' financial system to commit crimes." SEC officials are aligned with this approach, with the SEC Division of Enforcement Director noting that gatekeepers will "remain a significant focus for the [SEC's] Enforcement Division" while pointing to recent SEC actions against corporate lawyers and auditors, and with the SEC's Whistleblower Program reportedly contributing to the successful pursuit of auditors and attorneys. Given the SEC's focus on trusted advisors, companies would be wise to pressure test their current third party diligence processes, and to invest in strengthened procedures as needed, recognizing that such advisors may be a target of increased attention.

Finally, apparently undeterred by courtroom challenges to the FCPA's jurisdictional reach, DOJ continues to pursue an ability to target allegedly corrupt actors *wherever* they may be. This year, the Second Circuit again heard oral arguments in *United States v. Hoskins*, previously discussed here and here, after DOJ appealed for a second time, following a post-trial acquittal. DOJ maintains that Hoskins, a UK citizen, is subject to the FCPA as an agent of a U.S. company. Along similar lines, DOJ is appealing the decision in *United States v. Rafoi-Bleuler* to the Fifth Circuit, after the District Court dismissed the case for lack of jurisdiction upon finding that Rafoi-Bleuler, a Swiss citizen and resident, was not an agent of a U.S. company. These cases reflect the importance of agency-based theories of liability

in FCPA prosecutions and the likely battleground over jurisdiction that will continue between U.S. enforcers and the defense bar in the years ahead.

Beyond these developments, DOJ continues to invest resources in the fight against corruption, promising to "surge" resources to white collar enforcement and embedding directly within the Criminal Fraud Section a specialized FBI team to "put[] agents and prosecutors in the same foxhole."

Under Investigation: Companies Face Expanded Cooperation Expectations and DOJ May Pursue More Aggressive Evidence Collection

DOJ is again raising the bar for companies wishing to secure cooperation credit. These heightened expectations are most evident in the revival of certain cooperation requirements originally contained in the Yates Memorandum, a 2015 policy document that encouraged prosecutors to pursue individual actors responsible for corporate misconduct, which we covered in a prior alert. The renewed guidance requires companies to disclose information related to *all* individuals involved in alleged misconduct in order to receive cooperation credit, reversing a Trump-era modification that allowed for cooperation credit when companies identified only those "substantially involved in or responsible for the criminal conduct."

This change may place additional burdens on companies during government investigations, while also potentially slowing the pace to reaching a resolution. In addressing this policy development during the opening plenary Year-in-Review panel at the flagship ACI FCPA conference in December (moderated by Covington), the Chief of DOJ's FCPA Unit explained that it does not mean that companies must "boil the ocean" to receive cooperation credit. He explained, however, that companies are not well placed to know which individuals may be of interest to the Department or to assess culpability. In other words, it is DOJ's job—not the job of companies and their lawyers—to determine which individuals were substantially involved in or responsible for criminal conduct. At bottom, he suggested—like with DOJ's anti-piling on policy—that companies should not play games to shield individuals from scrutiny. Thus, companies under investigation should be well placed to receive cooperation credit without "boiling the ocean" where an investigation is appropriately scoped and relevant facts regarding individuals are provided to the Department. By contrast, companies and counsel who attempt to scope an investigation too narrowly will likely meet stronger pushback from DOJ based on this policy change, and a steeper hill to climb to receive cooperation credit.

Beyond these policy-based initiatives, for several years the Department has sought to cement its ability to rely on an expanded universe of materials seized directly from investigation targets or relevant third parties by relying on so-called "filter" or "taint" teams to conduct privilege screenings. These efforts have been the subject of ongoing litigation in a number of Circuits, with several courts recognizing the perceived conflict of interest inherent in the government assessing its own capability to access potentially privileged materials that could aid criminal investigations. After initial setbacks in the courtroom, this year saw the Eleventh Circuit joining other Circuits in upholding the use of filter teams to review seized materials for privilege, but it left open the possibility for future challenges where the filter team is making unilateral privilege determinations. Following this most recent courtroom win, and paired with DOJ's bullish enforcement attitude, we will be watching to see whether DOJ seeks to rely more heavily on search warrants, as is the case in many international jurisdictions.

Resolution Outcomes: A Tougher Road for Repeat Violators and a Broader Aperture for Bringing Charges Against Allegedly Corrupt Conduct

DOJ's newly announced policies specifically emphasize that DOJ intends to crack down on repeat corporate offenders, perhaps driven by a perception that some companies have treated non-prosecution agreements ("NPAs"), deferred prosecution agreements ("DPAs"), and plea agreements as the cost of doing business rather than as an opportunity to meaningfully improve their compliance cultures. But even beyond companies who have entered NPAs, DPAs, and plea agreements, as we covered in a previous alert, when considering whether to bring an enforcement action against corporations, DOJ prosecutors will now consider *all* of a corporation's prior misconduct, rather than just similar misconduct, in weighing whether to bring charges. Just how much misconduct is fair game remains an open

question around the margins, however, as DOJ has not yet updated the Justice Manual (DOJ's internal policy guidelines) to spell out how the new approach will operate in practice.

DOJ's FCPA Unit Chief provided oral clarification that the Department's charging analysis will begin with a company's *entire* record of prior misconduct—or the full panoply of criminal, civil, and regulatory misconduct; conduct discovered during a prior enforcement action; and conduct related to DOJ, state, and overseas enforcement actions. In weighing the relevance of the full scope of a company's prior misconduct, the similarity of prior misconduct to that under investigation remains highly relevant. DOJ will consider several factors, including the age of the misconduct, its seriousness and pervasiveness, whether the company's senior management was involved, and whether the company performed a root cause analysis of—and made corresponding compliance program changes in response to—the misconduct. Even considering those guardrails, we expect that prosecutors will consider a much broader scope of corporate misconduct than before, which could leave more companies with "repeat offender" labels and stiffer resolution outcomes.

In light of this policy change, companies need to be prepared to catalog their full history of misconduct and enforcement, with DOJ's FCPA Unit Chief cautioning that an inability to do so would be quite telling about the company's compliance culture. To the extent not already done, companies would be well advised to begin undertaking root causes analyses, as we discussed in a recent article. Such exercises are helpful in their own regard as part of an effort to continually enhance compliance programs based on lessons learned, as identified in DOJ's *Evaluation of Corporate Compliance Programs* guidance, but they also should help companies begin to catalog past misconduct and build a record of continual improvement in light of that conduct.

In addition to policies focused on tougher enforcement outcomes, prosecutors have drawn on an expanded arsenal of statutes to charge defendants in what amount to anti-corruption enforcement matters. As we predicted in a previous alert, DOJ continues to lean on statutory predicates other than the FCPA to prosecute allegedly corrupt conduct. For instance, in October, Credit Suisse resolved with DOJ allegations amounting to corruption and false disclosures under charges of conspiracy to commit wire fraud, while a parallel resolution with the SEC included charges under the FCPA's accounting provisions. And as we covered in another alert, recent changes to the Bank Secrecy Act and the Anti-Money Laundering Act may make those statutes even more attractive vehicles for anti-corruption enforcement, particularly in cases that may be beyond the FCPA's jurisdictional reach. Perhaps foreshadowing a greater emphasis on these statutes, a senior DOJ official recently noted at a conference that those who follow FCPA enforcement matters should expect to see new types of cases in the near future.

Post-Resolution: Looking Increasingly Like a Prolonged Investigation

DOJ's heightened scrutiny of companies will not stop at the moment of settlement. As we covered in a previous alert, new DOJ policy changes revert to providing the Department more latitude to impose external compliance monitorships on companies as part of a resolution, and DOJ has stepped up efforts to police compliance with post-resolution obligations.

One of the key tools in DOJ's arsenal for monitoring compliance post-resolution is the imposition of an external compliance monitor, a tool that looks as if it will now be more frequently wielded by prosecutors "to encourage and verify compliance." DOJ's recent policy updates explicitly reversed any perception stemming from the 2018 Benczkowski Memorandum that monitorships are disfavored in corporate resolutions. DOJ's revised policy makes clear that a monitorship determination will depend in large part on whether DOJ has faith that a company's compliance infrastructure can detect and remediate future wrongdoing on its own. In that regard, if a compliance program is "tested, effective, adequately resourced, and fully implemented at the time of resolution," a monitor may not be necessary; the opposite might be true where a program is "untested, ineffective, inadequately resourced, or not fully implemented at the time of a resolution." Even where the Department determines that a monitorship is not appropriate, DOJ prosecutors may alternatively resort to enhanced compliance reporting obligations, which featured prominently in recent DPAs entered into by Boeing and Credit Suisse (as well as in domestic corruption cases brought against FirstEnergy Corp. and Recology Inc.). For example, Boeing's resolution contains an "Enhanced Corporation

Compliance Reporting" section requiring quarterly reporting to DOJ "regarding remediation, implementation, and testing of its compliance program and internal controls, policies, and procedures." Companies that invest in compliance early and meaningfully—and that can demonstrate effectiveness through testing—are less likely to see DOJ resort to these measures during settlement negotiations.

Beyond the imposition of a monitor or enhanced compliance reporting obligations, DOJ has strongly signaled that it will strictly police compliance with DPAs and NPAs. In that sense, whereas a company previously might have felt a moment of respite post-resolution, DOJ has put companies on notice that such a period is not a time to ease up efforts to ensure strong compliance. The Deputy Attorney General warned in October that DOJ would be stepping up its policing of compliance with DPAs and NPAs. Since then, at least two senior DOJ officials noted that several companies have been notified of breaches of their resolution agreements, which "will carry very significant exposure for those organizations." These officials likely were referring to NatWest, which in December pled guilty to one count of wire fraud and one count of securities fraud and agreed to engage an independent compliance monitor following DOJ's finding of a breach of its 2017 NPA, and Ericsson, which received a breach notification from DOJ in recent months. In light of these developments, companies should approach the period in which they remain subject to DPAs and NPAs (and plea agreements) as one that carries stakes as high as those that exist during an ongoing investigation. In particular, such companies should take proactive steps to continually improve compliance program effectiveness to mitigate the risk of enhanced DOJ scrutiny and also to be well positioned in the event that DOJ identifies a breach of a resolution vehicle's terms.

More Changes to Come, but is DOJ Inviting Unintended Consequences by Adding Sticks and Removing Carrots?

As striking as DOJ's recent policy changes have been, the Department cautioned that "[l]ooking to the future, this is a start—and not the end—of this administration's actions to better combat corporate crime." In that regard, DOJ is forming a Corporate Crime Advisory Group, composed of representatives from across the Department who will evaluate a host of issues in corporate criminal enforcement and propose revisions to the Department's policies.

In forecasting even more aggressive changes to come, the Deputy Attorney General hinted that new policies may make it more difficult for companies to obtain a DPA or an NPA if they have received one previously, even if the subject of the previous resolution is unrelated to the matter at issue. This change would represent a marked departure from longstanding practice. Companies in highly regulated industries or with a history of past misconduct could face a decidedly different calculus not only when resolving matters, but also when considering whether to make a voluntary disclosure. If a DPA or an NPA, for example, were off the table altogether for repeat offenders (or at least in the absence of a voluntary disclosure), the decisions for certain companies in how to engage with the Department would become even more complicated than before.

We will be watching closely to see how the Department balances its reinvigorated tough-on-corporate-crime stance, which gives DOJ more sticks, against its years'-long campaign to incentivize companies to voluntarily disclose, fully cooperate with DOJ's investigations, and adequately remediate misconduct. When asked recently about the potential for tension between signals of more severe enforcement outcomes and encouraging companies to self-report misconduct, the Chief of DOJ's FCPA Unit said that enforcement outcomes would be better for those who self-disclose as opposed to those who do not. Yet companies may decide to place more weight on the risks of self-disclosure than they did previously if certain benefits are coming off the table as a matter of DOJ policy.

Invest, Invest, Invest in Compliance

Given the prevailing enforcement climate, it is obvious that companies must continue to invest in enhancing their compliance programs to prevent misconduct and to prepare for DOJ and SEC scrutiny, if and when it comes. A senior DOJ official did not mince words in a recent interview when he said: "I want to reiterate to compliance folks [], as someone who has been in their shoes, they should understand that my scrutiny is going to be very rigorous. . . . I'm trying to highlight that if you are proactive now, and you properly resource these programs . . . there will be significant rewards for your organization." This sentiment reinforced one of the Deputy Attorney General's stated key takeaways

for companies stemming from her policy announcement—namely, "[c]ompanies need to actively review their compliance programs to ensure they adequately monitor for and remediate misconduct—or else it's going to cost them down the line."

The White House is Spearheading a Whole-of-Government Focus on Anti-Corruption Compliance and Enforcement as a Core National Security Interest

Layered on top of DOJ's enhanced enforcement messaging, the White House is pushing a whole-of-government approach in the fight against corruption. President Biden has identified anti-corruption as both a core national security interest—which is notable in and of itself given the resources that can be brought to bear in pursuing national security objectives—and as a humanitarian priority. This messaging began first in the Administration's June National Security Memo and was reinforced in December with the SCC, as we covered in alerts here and here. The Administration is clearly signaling to domestic partners with a role to play in the fight against corruption that they must demonstrate an emphatic pursuit of corruption, and signaling to the international community that the Administration intends to lead the anti-corruption charge globally.

Running throughout the SCC is a clear message of institutionalizing collaboration and cooperation with domestic and foreign counterparts with a role to play in enforcement, with the parallel objectives of bolstering U.S. enforcement and promoting international enforcement initiatives. As we discussed in our alert, the SCC details a number of strategic objectives focused on collaboration with international partners, and specifically notes the importance of working with those partners to create complementary regimes that amplify the United States' anti-corruption efforts. And despite the limited levels of corporate anti-corruption enforcement activity this past year, one clear theme in the resolutions was international coordination, with three out of four enforcement actions this year noting cooperation with foreign enforcers, including in Brazil, the UK, India, Switzerland, and the United Arab Emirates.

Beyond calling for increased collaboration both domestically and internationally, the SCC foreshadows a focus on new tools to combat corruption. In particular, the SCC places emphasis on the need to identify and address vulnerabilities in the financial system, including through AML enforcement against corporations and individuals alike, spotlighting the role that money laundering and unlawful trafficking play in permitting criminal actors to "shelter the proceeds of their illicit activities." The SCC also announced plans to build on the current AML enforcement framework through developing public databases linking potentially corrupt entities to the individuals who control them. Companies should leverage these resources to bolster their AML and anti-corruption compliance programs. In addition to these initiatives, and as discussed above, the SCC contemplates efforts to enact legislation to criminalize the "demand side of bribery" and new legislation and regulations focused on those who are in a position to enable money launderers, "including lawyers, accountants, and trust and company service providers."

In announcing its anti-corruption initiatives, the Biden Administration has focused considerably on Central America, as highlighted in a series of pronouncements over the past seven months. As we covered in a previous alert, in June, DOJ announced an initiative to Combat Human Smuggling and Trafficking and to Fight Corruption in Central America. This initiative created the multi-agency Joint Task Force Alpha to coordinate investigation and enforcement resources and seeks to increase investigations, prosecutions, and asset recoveries to combat corruption in Mexico and the Northern Triangle (El Salvador, Guatemala, and Honduras). This announcement was quickly followed by the State Department's publication of the Engel List, which identified 55 individuals from El Salvador, Guatemala, and Honduras who are barred from entering the United States after the State Department determined that they engaged in corruption or obstructed related investigations, which we discussed in a previous alert. Complementing these efforts, in October, DOJ announced a dedicated FBI hotline for "information about corruption-related crimes and possible violations of U.S. law" in the Northern Triangle.

Although we have yet to see enforcement actions stemming from these initiatives, companies operating in Central America would be well served by taking proactive steps to assess local corruption risks and to review their compliance controls, given the Administration's focus on the region. And companies outside of Central America should also take heed of the Biden Administration's anti-corruption pronouncements. When paired with DOJ's and the SEC's bullish

corporate enforcement agenda, companies should operate under the assumption that the next few years will involve intense scrutiny of corrupt conduct.

Government Enforcement is Not the Only Risk Stemming from Enforcement Activity

Several developments from the last year have served as important reminders that government enforcement is not the only risk facing companies that find themselves in the government's crosshairs. In the last year, companies have found themselves subject to civil claims from alleged victims of corrupt conduct and from shareholders. For example, Ericsson announced in 2021 that it settled, for $91 million, claims leveled by a former competitor alleging that the competitor was harmed by allegedly corrupt conduct outlined in Ericsson's 2019 FCPA settlement with DOJ and the SEC. In addition, in 2021 Cognizant disclosed that it entered into a $95 million settlement agreement with a putative class of shareholders to resolve claims related to its 2019 FCPA settlement with the SEC. Practitioners are aware that it is not uncommon for companies to face shareholder litigation or other collateral claims in the wake of an FCPA settlement, with such actions often seeing limited success—such as actions that were dismissed in 2021 against VEON (formerly Vimpelcom) and MTS stemming from their FCPA settlements. Ericsson's and Cognizant's decisions to settle these actions illustrate that companies must proactively manage collateral risks that can stem from government investigations themselves and from resolving matters with the government.

Internationally, Some Regions Push Ahead with Robust Anti-Corruption Enforcement Agendas, While Others Struggle to Gain Traction

Looking beyond U.S. borders, different regions saw varied trends in enforcement, with some making strides in their pursuit of enforcement against corrupt conduct (Europe and Asia), while others continue to face challenges in anti-corruption enforcement initiatives (Latin America and Africa). Those regions that struggled the most to make progress, however, also are those that appear likely to receive enhanced scrutiny from U.S. enforcement efforts abroad.

Europe had perhaps the greatest regional success this past year in pushing forward its anti-corruption agenda. June saw the launch of the EU's Public Prosecutor's Office ("EPPO"), which we foreshadowed in a previous alert. EPPO is an independent body with powers to investigate and prosecute crimes against the EU budget, including fraud, money laundering, corruption, and tax offenses. In November, it secured its first conviction in an action against a former East Slovenian mayor who pled guilty to falsifying documents in order to secure EU funding. At the national level, as we cover (along with other UK trends) in the Chambers 2022 Anti-Corruption Guide, the UK's Serious Fraud Office ("SFO") has continued to rely on DPAs to resolve anti-corruption inquiries and has seen total financial penalties continue to rise. At the same time, however, the SFO is opening fewer investigations, with only four new investigations publicly announced in 2021. In France, as in the UK, authorities are increasingly relying on CJIPs, the French equivalent of DPAs. In February, for example, French courts approved a €12 million CJIP with Bollore SE, a French corporation accused of bribery and fraud in Togo. In Germany, a newly assembled coalition government published its coalition agreement in December 2021, discussed in our alert here, which may reinvigorate long-discussed plans to establish corporate criminal liability laws in the country. The extent to which the new government will seek to progress the prior draft law—which included proposals for new and higher sanctions against companies, statutory regulations on the implementation of compliance measures, and a legal framework for internal investigations—remains to be seen.

In Asia, China remains the biggest focus area for anti-corruption investigations and enforcement. In September 2021, China's National Supervisory Commission ("NSC") released anti-corruption guidelines that signaled the country's increased attention to prosecuting those who offer bribes. These guidelines reflect the Chinese government's continuing efforts to integrate its ongoing anti-graft campaign into the country's expanding social credit system, which we covered previously. In terms of executing cross-border investigations in China, the country's new Data Security Law and Personal Information Protection Law introduce additional layers of complexity for collecting and processing data, as we discuss in detail here and here. As we covered previously, in South Korea, the Corruption Investigation Office for High-Ranking Officials (the "CIO") was established in January 2021. The CIO is

an independent investigative agency authorized to investigate and prosecute certain crimes, including bribery and concealment of criminal proceeds, related to the duties of current and retired high-ranking officials, but the CIO's reach can extend to companies or individuals who are involved in such crimes. The CIO has initiated 24 investigations to date, but no prosecutions have been announced.

Two other regions—Latin America and Africa—faced more challenges in pursuing anti-corruption enforcement initiatives this past year. Countries in Latin America have been impacted by volatile political climates and the effects of the COVID-19 pandemic, which have degraded the capacity of governments to combat corruption. As citizens and local governments focus on addressing urgent public health priorities, anti-corruption agencies and judicial bodies have seen diminished autonomy and resources, leading to an overall decrease in enforcement activity. For example, in Brazil, the Operation Car Wash (*Lava Jato*) Task Force, which spearheaded corruption investigations against Odebrecht and other companies and individuals, was disbanded in February 2021, resulting in a deceleration in anti-corruption investigation activity. In addition, in 2021, several prominent convictions secured under Operation Car Wash were overturned. In Africa, local enforcement activity has been trending upward in some jurisdictions, such as South Africa and Angola, but we have yet to see any major corporate enforcement actions in the region. Elsewhere, such as in Nigeria and Kenya, recent efforts to improve anti-corruption enforcement have been widely perceived as failures.

Despite local enforcement challenges in Latin America and Africa, we expect both regions to be strategic priorities for U.S. enforcement authorities in 2022 and beyond. As discussed above, the Biden Administration has signaled a clear focus on combating and pursuing corruption in Central America. And significant U.S. enforcement activity in Africa continues, with the SCC signaling an increased focus on the continent, as we discuss in our recent Africa advisory.

In sum, companies can expect varying degrees of scrutiny from regulators in a number of regions to complement the heightened U.S. enforcement environment, at the same time that enforcement authorities in many countries continue to collaborate and share information. Companies would be well advised to take a global view of their anti-corruption compliance programs to ensure that programs are responsive to regional risks, enforcement priorities, and developments, including by prioritizing in-depth risk assessments; enhancing training programs; ensuring effective internal investigations, remediation, and root cause analyses; and testing their compliance programs for effectiveness.

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