

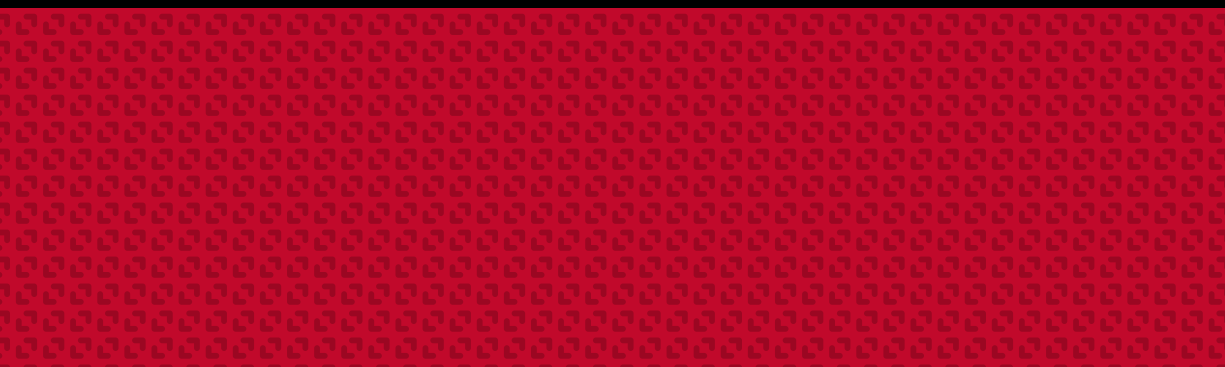


LATIN LAWYER

**THE GUIDE TO
CORPORATE
COMPLIANCE**

FOURTH EDITION

Editor
Andrew M Levine



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Publisher's Note

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

Edited by Andrew M Levine, litigation partner at Debevoise & Plimpton LLP, this brings together the knowledge and experience of leading practitioners from a variety of disciplines and provides guidance that will benefit all those who must navigate the region's complex, fast-changing framework of rules and regulations. In particular, this latest edition offers a fresh focus on forensic accountancy, how a volatile political situation can push ESG to the top of the agenda and the compliance challenges involved with fintech – among other areas.

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

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

CHAPTER 2

No Signs of Slowing Down: Latin America's Current Compliance Climate

Julie Bédard, Maria Cruz Melendez and Mayra Suárez¹

Introduction

Brazil's *Operation Car Wash* investigation has dominated headlines and captured public attention across Latin America and around the world since 2014. The investigation looked into widespread bribery and corruption involving politicians and state-owned enterprises and led to the conviction (although subsequently

¹ Julie Bédard and Maria Cruz Melendez are partners, and Mayra Suárez is a counsel at Skadden, Arps, Slate, Meagher & Flom LLP. The authors thank Thiago Jabor Pinheiro, Izabela Pacheco Telles, João Marcelo da Costa e Silva Lima, Thiago Luís Santos Sombra and Luiza Mussoi Cattley of Mattos, Filho, Veiga Filho, Advogados; César Coronel Jones and Maria Celeste Alvarado Herrera of Coronel & Perez; José Daniel Amado Vargas and José Luis Repetto of Miranda & Amado; Carlos Chávez and Marianela Romero of Galicia Abogados, S.C.; Mario Antonio Sáenz Marinero of Novis Estudio Legal; Jorge Luis Arenales de la Roca and Anneliss Wohlers of Arias (Guatemala); Ignacio Sanz of Zang Bergel & Viñes Abogados; Juan Carlos Tristan, Alí Didier Ordóñez and Federico Barrios of BLP Abogados; Andrés Moreno of Moreno Baldivieso; Felipe G. Ossa and Álvaro Vives of Claro y Cía; José Humberto Frías of D'Empaire Reyna Abogados; Daniel Posse, Óscar Tutasaura, Jaime Cubillos and Jordi Buitrago of Posse, Herrera & Ruiz; and Cedric Kinschots and Estif Aparicio of Arias, Fabrega & Fabrega for their contributions to this chapter.

annulled) of a former (and now current) Brazilian president² and the impeachment of another,³ the guilty pleas of Brazilian and foreign companies, payments of millions of dollars in penalties and more than 250 convictions.⁴

In the wake of that unprecedented enforcement activity, legislators, enforcement agencies and judiciaries within and outside Latin America have made substantial efforts to combat corruption. The US Department of Justice (US DOJ) and US Securities and Exchange Commission (US SEC) have brought corruption-related charges against more than 100 individuals and corporations for conduct in or related to Latin America since 2018, often in collaboration with enforcement counterparts in other countries.⁵

The interest in combating corruption in the region shows no sign of abating. In March 2019, the US Federal Bureau of Investigation (FBI) announced the Miami International Corruption Squad, a task force intended to work alongside the FBI's other international corruption squads, the US SEC and the US DOJ's Fraud and Money Laundering Asset Forfeiture sections, signalling the continuing focus of US authorities on corruption in Latin America.⁶ The squad has worked on several cases since its creation, including some that settled in 2020 and led to convictions in 2021 and 2022, and it has developed strong partnerships with law enforcement officials in Brazil, Colombia and Ecuador.⁷

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- 2 Associated Press, 'Former Brazilian President Lula convicted in second corruption case', *Los Angeles Times* (6 February 2019) <<https://www.latimes.com/world/la-fg-brazil-lula-conviction-20190206-story.html>>; 'What did Lava Jato, Brazil's anti-corruption investigation, achieve?' *The Economist* (9 March 2021) <<https://www.economist.com/the-economist-explains/2021/03/09/what-did-lava-jato-brazils-anti-corruption-investigation-achieve>>. Following the annulment of his conviction, Luiz Inácio Lula da Silva was elected for a third term as Brazil's president.
 - 3 Romero, Simon, 'Dilma Rousseff Is Ousted as Brazil's President in Impeachment Vote', *The New York Times* (31 August 2016) <<https://www.nytimes.com/2016/09/01/world/americas/brazil-dilma-rousseff-impeached-removed-president.html>>.
 - 4 Brazil's Federal Public Prosecutor's Office, 'Caso Lava Jato – Resultados' (24 August 2021) <<http://www.mpf.mp.br/grandes-casos/lava-jato/resultados>>; see also Brito, Ricardo & Slattery, Gram, 'After seven years, Brazil shuts down Car Wash anti-corruption squad', *Reuters* (3 February 2021) <<https://www.reuters.com/article/us-brazil-corruption/after-seven-years-brazil-shuts-down-car-wash-anti-corruption-squad-idUSKBN2A4068>>.
 - 5 See section below titled 'Recent enforcement trends.'
 - 6 Press Release, Federal Bureau of Investigation [FBI], 'FBI Announces New International Corruption Squad in Miami Field Office' (5 March 2019) <<https://www.fbi.gov/news/pressrel/press-releases/fbi-announces-new-international-corruption-squad-in-miami-field-office>>.
 - 7 See Sun, Mengqi, 'FBI Increasingly Probes for Corruption Overseas', *The Wall Street Journal* (31 December 2020) <<https://www.wsj.com/articles/fbi-increasingly-probes>>.

On 3 June 2021, US President Joe Biden issued a Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest.⁸ Shortly thereafter, the US DOJ announced an Anticorruption Task Force aimed at combatting corruption in Central America, specifically in El Salvador, Guatemala and Honduras.⁹

In October 2021, Deputy Attorney General Lisa Monaco announced a commitment to increasing resources to DOJ prosecutors, including the establishment of a permanent squad of FBI agents within the Criminal Fraud Section, signalling a continued interest in prosecuting corporate and white-collar crime.¹⁰ Monaco followed up with a memo in September 2022, providing guidance on how prosecutors should ensure individual and corporate accountability via criminal enforcement.¹¹

for-corruption-overseas-11609434000>; Press Release, US DOJ, 'Former Ecuadorian Government Official Sentenced to Prison for Role in Bribery and Money Laundering Scheme' (23 March 2021) <<https://www.justice.gov/opa/pr/former-ecuadorian-government-official-sentenced-prison-role-bribery-and-money-laundering>>; Press Release, US DOJ, 'Former Venezuelan National Treasurer and Husband Convicted in International Bribery Scheme' (15 December 2022) <<https://www.justice.gov/usao-sdfl/pr/former-venezuelan-national-treasurer-and-husband-convicted-international-bribery-sche-0>>.

8 Press Release, White House, 'Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest' (3 June 2021), <<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>>.

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

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

11 See Monaco, Lisa, US Department of Justice Memorandum, 'Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group' (15 September 2022) <<https://www.justice.gov/opa/speech/file/1535301/download>>.

Companies operating in Latin America should be mindful of recent enforcement trends and of global regulators' focus on fighting corruption in the region. This chapter reviews: recent trends in legislative and constitutional anti-corruption enforcement regimes in Latin America; and global enforcement of corruption-related conduct in Latin America.

Key legislative changes in Latin America and elsewhere

Development and strengthening of anti-corruption regimes

Corporate criminal liability

In recent years, many Latin American countries, by legislation or constitutional amendment, have established corporate criminal liability for bribery and corruption offences. For example, Mexico (May 2015 and June 2016),¹² Peru (April 2016,

12 Since 2005, the Mexican Federal Criminal Code provides for corporate criminal liability in cases of international bribery, committed in the entity's name, on its behalf, for its benefit or using means provided by the entity. See Código Penal Federal [CPF], Article 222 *bis*, Diario Oficial de la Federación [DOF] 14-08-1931, últimas reformas DOF 06-01-2023 (Mex.) <https://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Penal_Federal.pdf>. In 2015, the Mexican Constitution was amended to mandate Congress to pass comprehensive anti-corruption legislation providing for criminal liability for corruption offences. See Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de combate a la corrupción, Diario Oficial de la Federación [DOF] 27-05-2015 (Mex.) <www.diputados.gob.mx/LeyesBiblio/proceso/docleg/62/223_DO_27may15.pdf>. Further, in 2016, the Federal Criminal Code and the National Criminal Procedure Code were amended to extend corporate criminal liability to certain offences, including public bribery and influence peddling, provided that the entity did not have proper controls in place; see DOF 17-06-2016 (Mex.) <https://www.dof.gob.mx/nota_detalle.php?codigo=5441763&fecha=17/06/2016>; see also Decreto por el que se expide la Ley General del Sistema Nacional Anticorrupción; la Ley General de Responsabilidades Administrativas, y la Ley Orgánica del Tribunal Federal de Justicia Administrativa, Diario Oficial de la Federación [DOF] 18-07-2016 (Mex.) <https://www.diputados.gob.mx/LeyesBiblio/ref/lgsna/LGSNA_orig_18jul16.pdf>.

amended 2017 and 2018),¹³ Argentina (March 2018),¹⁴ Costa Rica (June 2019),¹⁵ and Ecuador (February 2021)¹⁶ now provide for corporate criminal liability for bribery of domestic public officials; in some countries, corporations can be liable for related conduct such as money laundering, commercial bribery and bribery of foreign officials.

In other Latin American countries, such as Colombia and Brazil, only individuals, not corporations, can be held criminally liable for anti-corruption violations, though companies in Colombia may be held jointly and severally liable with employees and executives who engage in corrupt conduct, and, in Brazil, corporations can be held criminally liable for environmental violations.¹⁷

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- 13 See Law No. 30424, El Peruano (Peru) (21 April 2016) <www.leyes.congreso.gob.pe/Documentos/Leyes/30424.pdf> (providing for criminal liability for transnational bribery, committed in the name or on behalf of the legal entity for its direct or indirect benefit); Legislative Decree No. 1352 (amending Law No. 30424), El Peruano (Peru) (7 January 2017) <<https://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/01352.pdf>> (delaying enactment of Law No. 30424 to 7 January 2018 and expanding criminal liability to cover the offences of bribery of domestic public officials, money laundering and financing of terrorism); Law No. 30835 (amending Law No. 30424), El Peruano (Peru) (2 August 2018) <https://www.leyes.congreso.gob.pe/Documentos/2016_2021/ADLP/Normas_Legales/30835-LEY.pdf> (modifying the name of Law No. 30424 and expanding criminal liability to cover the offences of influence peddling and collusion).
- 14 See Law No. 27401, Official Bulletin (Argentina) (1 December 2017) <<https://www.ilo.org/dyn/natlex/docs/electronic/106245/130242/f-2006629615/ley%2027401%20argentina.pdf>>. The law provides for criminal liability for offences, including foreign bribery and false books and records, committed with the company's intervention or in the company's name, interest or benefit. Penalties include fines, suspension of commercial activities, disqualification from public tenders, cancellation of corporate registration, loss of government benefits and publication of the conviction. There is no retroactive liability.
- 15 See Law No. 9699 de Responsabilidad de las Personas Jurídicas sobre Cohechos Domésticos, Soborno Transnacional y Otros Delitos (Costa Rica) (6 October 2019) <http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=88954>.
- 16 See Organic Integral Criminal Code, Official Registry (Ecuador) (10 February 2014) <https://oig.cepal.org/sites/default/files/2014_codigopenal_ecu.pdf>; see also Organic Law No. 392, "On Amendments to the Comprehensive Organic Criminal Code in Relation to Anti-Corruption," Official Registry (Ecuador) (12 February 2021) <<https://lvro.finder.lexis.com.ec/?id=071BBC576F73088AA25B474286480662679664BB&type=%27%27&productName=LEXISNEWS&page=1>>.
- 17 See Law No. 599, Official Gazette (Colombia) (24 July 2000) <<https://www.refworld.org/docid/3dbd1fd94.html>>; see Law No. 9605, Official Gazette (Brazil) (13 February 1998) <www.planalto.gov.br/ccivil_03/leis/l9605.htm>; see also Law No. 2195, Official Gazette (Colombia) (18 January 2022) <https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=175606> (providing for administrative sanctions of up to 200,000 million

Mandated or recommended compliance programmes and other factors in leniency determinations

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

In Brazil, compliance programmes are generally not required under federal law, unless contracting with the government, under certain circumstances. For example, Brazil's 2021 Public Procurement Law, Law No. 14133, mandates that companies that win public bids valued at over 200 million reais develop an effective compliance programme within six months of the contract's execution.¹⁹ Also, companies that have compliance programmes in place before the tender process, all else being equal between two bids, will be awarded the contract.²⁰ Even where compliance programmes are not required, companies with effective compliance programmes may be entitled to a fine reduction of up to 5 per cent in

pesos (US\$41 million) for corporate entities that benefit or seek to benefit from foreign bribery committed by administrators or employees).

- 18 Federal and certain state laws in Brazil require companies that contract with state entities to have compliance programmes. See, e.g., Federal District Law No. 6112 of 2 February 2018, Official Gazette (Brazil) (6 February 2018); Rio de Janeiro State Law No. 7753 of 17 October 2017, Official Gazette (Brazil) (18 October 2017); Rio Grande do Sul State Law No. 15228 of 25 September 2018, Official Gazette (Brazil) (26 September 2018); Amazonas State Law No. 4370 of 27 December 2018, Official Gazette (Brazil) (27 December 2018); Goiás State Law No. 20489 of 10 June 2019, Official Gazette (Brazil) (25 June 2019).
- 19 See Law No. 14133 of 1 April 2021, Official Gazette (Brazil) (1 April 2021) <<https://www.in.gov.br/en/web/dou/-/lei-n-14.133-de-1-de-abril-de-2021-311876884>> (which will replace previous Public Procurement Law No. 8666 of 21 June 1993 as of 1 April 2023).
- 20 *id.* Article 60.

administrative proceedings.²¹ Brazil's July 2022 Decree No. 11,129 sets forth new requirements for assessing compliance programmes and calculating cooperation credit as part of leniency agreements.²²

In August 2021, Colombia expanded the criteria used to determine which non-financial companies must adopt 'transparency and business ethics programmes;' to be deemed sufficient, the programmes now must also include a compliance officer, in addition to other requirements.²³

Peru provides companies that have effective 'prevention models' before the commission of a crime, with the possibility to be exempt from corporate liability for corrupt conduct.²⁴ Similarly, under Chilean law, the adoption and implementation of 'prevention models' before the corrupt conduct may be sufficient evidence to prove the company's innocence in criminal proceedings.²⁵

21 Law No. 12846 of 1 August 2013, Official Gazette (Brazil) (2 August 2013) <https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/30042702/do1-2013-08-02-lei-n-12-846-de-1-de-agosto-de-2013-30042696> (providing incentives for corporate compliance programmes); see Decree No. 11129 of 11 July 2022, Official Gazette (Brazil) (11 July 2022) <http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2022/Decreto/D11129.htm> (providing credit for effective compliance programmes, defining parameters for evaluating compliance programmes (e.g., customised to each legal entity and its activities, commitment by senior management, training) and providing for the administrative liability of legal persons for the commission of acts against public, national or foreign administrations). Securities and Exchange Commission of Brazil, Rule No. 607 establishes that any publicly held company with an effective compliance programme may have their fines reduced by up to 25 per cent. Instruction No. 607 of 17 June 2019, Official Gazette (Brazil) (18 June 2019) <www.in.gov.br/web/dou/-/instrucao-n-607-de-17-de-junho-de-2019-164059674>.

22 Decree No. 11129 (footnote 21, above).

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

24 See Law No. 30424, Article 17 (footnote 13, above).

25 See Law No. 20393, Establishing the criminal responsibility of legal persons in the crimes of laundering of assets, financing of terrorism and bribery, Official Gazette (Chile) (25 November 2009) <http://www.oas.org/juridico/spanish/mesicic3_chL_ley20393.pdf> (stating that an effective prevention model includes: (1) systems to identify risks, establish specific protocols, rules and procedures to prevent the commission of said offences, and identify procedures for administrating and auditing the entity's financial resources; (2) internal administrative sanctions; (3) procedures for reporting wrongdoing; and (4) procedures to detect and correct systemic failures in the prevention model).

In Costa Rica, compliance programmes are not required by law; however, for companies that adopt them, they can serve as a mitigating factor for any criminal penalties by up to 40 per cent.²⁶

In Argentina, compliance programmes are not a regulatory requirement for companies, unless contracting with the Argentine federal government; however, compliance programmes are a requisite element for obtaining a reduction of, or exemption from, anti-bribery related penalties.²⁷

In Mexico, the Mexican General Administrative Liabilities Act mandates that, in assessing a corporation's liability for alleged acts of corruption, the competent court must consider whether the corporation has an integrity policy and if the policy includes: (1) a manual clearly setting forth the responsibilities of the appropriate areas and individuals within the organisation; (2) a code of conduct appropriately socialised within the organisation; (3) adequate control and audit mechanisms; (4) adequate whistleblowing mechanisms and sanctions for violating the policy; and (5) adequate training mechanisms.²⁸

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

Similarly, under Ecuador's Criminal Code, individuals who engage in corrupt conduct can obtain a reduction in their sentence if they provide accurate and verifiable information that (1) clarifies facts under investigation, (2) results in the identification of culpable persons or (3) helps to prevent, neutralise or impede the commission of a crime of equal or greater significance.³⁰ For an individual

26 See Law No. 9699, Article 12 (footnote 15, above).

27 See Law No. 27401, Articles 9, 23–24, (footnote 14, above).

28 See Ley Federal de Responsabilidades Administrativas, Article 25, Diario Oficial de la Federación [DOF] 18-07-2016, latest reforms DOF 27-12-2022 (Mex.) <https://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA.pdf>

29 See Legislative Decree No. 957, Article 472, Criminal Procedure Code (Peru) (29 July 2004) <<https://www.wipo.int/wipolex/en/text/202824>>.

30 See Organic Integral Criminal Code, Article 491, Official Registry (Ecuador), 3 February 2014 <https://oig.cepal.org/sites/default/files/2014_codigopenal_ecu.pdf>.

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

Expansion of prohibited and regulated conduct

Several Latin American countries have expanded the reach of their anti-bribery statutes. In Peru and Chile, for instance, prohibited conduct extends beyond the bribery of public officials and includes commercial bribery – bribery of individuals acting in a private capacity.³³ However in Peru, private corruption charges can only be brought against individuals, not companies. Other countries, such as Argentina and Venezuela, have also criminalised bribery of foreign, not just domestic, government officials.³⁴

Some countries have placed restrictions on corporate political contributions as a means to combat corruption. For example, in Chile, companies are prohibited from political contributions to electoral campaigns; these may be made by individuals only.³⁵ In Colombia, any company that contributes greater than 2.5 per cent of the total contribution permitted under law to any president, governor or mayor may not enter into public contracts with entities administered by the candidate while the candidate is in office.³⁶

31 *id.* Articles. 492, 493.

32 See Organic Law No. 392, Article 1 (footnote 16, above).

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

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

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

36 See Law No. 1474 of 12 July 2011, Official Gazette (Colombia) (12 July 2011) <<http://wp.presidencia.gov.co/sitios/normativa/leyes/Documents/Juridica/Ley%201474%20de%2012%20de%20Julio%20de%202011.pdf>>.

Northern Triangle Enhanced Engagement Act³⁷

Enacted by the United States in December 2020, the Act requires that the US Secretary of State and the Administrator of the US Agency for International Development devise a five-year strategy to, among other things, 'advance economic prosperity' and 'combat corruption' in El Salvador, Guatemala and Honduras.³⁸ Pursuant to the Act, on 1 July 2021, the US Department of State released its first iteration of the 'Engel List,' a directory of suspected corrupt and undemocratic actors in the Northern Triangle.³⁹ The list identified 55 individuals, largely current and former public officials, whose visas were immediately revoked and are subsequently barred from entering the United States.⁴⁰ Notably, following the publication of the first Engel List, authorities in El Salvador, Guatemala and Honduras did not initiate investigations into any of the named officials.⁴¹ Critics say this is because the list focused mainly on 'secondary perpetrators;' high-level officials were omitted from the list.⁴²

37 United States-Northern Triangle Enhanced Engagement Act, Pub. L. No. 116-260, Division FF, §§ 351-353, 134 Stat. 3127, 3127-31 (27 December 2020) (codified at 22 U.S.C. §§ 2277, 2277a) <<https://www.govinfo.gov/content/pkg/PLAW-116publ260/pdf/PLAW-116publ260.pdf>>.

38 *id.* § 352(a) (codified at 22 U.S.C. § 2277(a)).

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

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

41 See Méndez Dardón, Ana María 'Engel List: What is the United States Telling Central America?' Washington Office on Latin America (21 July 2022) <<https://www.wola.org/analysis/engel-list-what-is-the-united-states-telling-central-america/>>; Marroquín, César Pérez 'MP califica de falsos e infundados señalamientos de EE. UU. Para incluir a Consuelo Porras en la lista de actores corruptos,' Prensa Libre (20 September 2021) <<https://www.prensalibre.com/guatemala/politica/mp-califica-de-falsos-e-infundados-senalamientos-de-ee-uu-para-incluir-a-consuelo-porras-en-la-lista-de-actores-corruptos-breaking/>> (The Guatemalan government has publicly rejected and condemned the Engel List due to 'unfounded allegations').

42 See Plazas, Natalia 'Engel List': US accuses high-ranking Central American officials of corruption,' France 24 (7 February 2021) <<https://www.france24.com/es/am%C3%A9rica-latina/20210702-eeuu-corrupcion-lista-triangulo-norte>>.

On 20 July 2022, the US Department of State added 59 other individuals and expanded the list to include Nicaraguan officials.⁴³ Among those added were three officials close to President Nayib Bukele of El Salvador and Honduran officials close to the country's President Manuel Zelaya.⁴⁴

State-owned entities

Operation Car Wash: Petrobras and beyond

After almost seven years of investigating corruption schemes in Brazil and elsewhere, *Operation Car Wash* was officially disbanded at the beginning of February 2021.⁴⁵ Although *Operation Car Wash* began with Petróleo Brasileiro SA (Petrobras), Brazil's state-controlled energy company, many other state-owned or state-controlled enterprises were implicated across Latin America. Companies interacting with state-owned or state-controlled enterprises in Latin America should scrutinise these interactions.

Between December 2016 and December 2018, at least four companies reached resolutions with the US DOJ or the US SEC (or both), acknowledging bribery payments made to or through Petrobras executives, as well as, in some instances, additional improper payments to other government or state-owned entities (SOEs) or officials.⁴⁶ The alleged misconduct spanned Latin America

43 See Press Statement, Blinken, Anthony J, US Secretary of State, 'Release of the Section 353 List of Corrupt and Undemocratic Actors for Guatemala, Honduras, El Salvador, and Nicaragua' (20 July 2022) <<https://www.state.gov/release-of-the-section-353-list-of-corrupt-and-undemocratic-actors-for-guatemala-honduras-el-salvador-and-nicaragua/>>; See § 353(b) (codified at 22 U.S.C. § 2277a(b) 'Corrupt and Undemocratic Actors Report') <<https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/>>.

44 See Gressier, Roman 'US Shows Its Teeth on Engel List,' *El Faro* (18 July 2022) <<https://elfaro.net/en/202207/centroamerica/26278/US-Shows-Its-Teeth-on-Engel-List.htm>>.

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

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

– including alleged payments in Argentina, Brazil, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Peru and Venezuela. In connection with the US resolutions, Brazilian authorities were also able to secure independent settlements with all four companies.⁴⁷

One such company was Brazilian construction conglomerate Odebrecht. Following Odebrecht's December 2016 resolution with US, Brazilian and Swiss authorities, prosecutors from Brazil and 10 other Latin American countries formed a task force to investigate potential bribes paid by the company, emphasising information sharing and cooperation in the region.⁴⁸ As a result of its efforts to cooperate, the company has reached agreements with prosecutors in at least six countries in Latin America.

On 26 September 2018, Petrobras agreed to pay US\$1.78 billion – at the time, the largest single US Foreign Corrupt Practices Act (FCPA) resolution – to resolve investigations by the US DOJ, the US SEC and Brazilian authorities concerning bribery.⁴⁹ As part of its resolution, Petrobras agreed to cooperate with other investigations into related conduct.⁵⁰ Both US and Latin American authorities have been active in prosecuting companies that paid bribes to and through Petrobras executives. Since the resolution of the Petrobras investigation, the US DOJ and the US SEC have, individually or jointly, reached resolutions with at least eight additional companies for Petrobras-related misconduct.⁵¹

gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>.

47 See, e.g., 'Keppel Offshore & Marine Reaches Global Resolution with Authorities in the U.S., Brazil and Singapore', Keppel Offshore & Marine (23 December 2017) <https://www.keppelturneau.com/en/article_item.aspx?sid=10072>; Press release, SBM Offshore, 'SBM Offshore achieves settlement with Dutch Public Prosecutor's Office over alleged improper payments. United States Department of Justice closes out the matter' (12 November 2014) <<https://www.sbmoffshore.com/newsroom/press-releases/2014/12-11-2014/sbm-offshore-achieves-settlement-dutch-public-prosecutors>>.

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

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

50 *id.* at 3.

51 Press release, US SEC, 'Vantage Drilling International Agrees to Settle FCPA Charges' (19 November 2018) <<https://www.sec.gov/enforce/34-84617-s>>; Press release, US DOJ, 'Samsung Heavy Industries Company Ltd Agrees to Pay \$75 Million in Global Penalties

Other SOEs

Operation Car Wash led investigators far beyond Petrobras. In April 2015, Brazilian prosecutors reported evidence of fraud at the country's health ministry and at state-owned bank Caixa Econômica Federal.⁵² In October 2020, J&F Investimentos S.A. (J&F), a Brazil-based investment company, as well as its subsidiary JBS S.A., resolved enforcement actions with both the US DOJ and US SEC. The company admitted to making nearly US\$150 million in corrupt payments to high-ranking Brazilian government officials, including almost US\$25 million to a member of the legislative branch of the Brazilian government, in exchange for securing hundreds of millions in financing from Caixa

to Resolve Foreign Bribery Case' (22 November 2019) <<https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign>>; Press release, US DOJ, 'TechnipFMC Plc and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Penalties to Resolve Foreign Bribery Case' (25 June 2019) <[https://www.justice.gov/opa/pr/technipfmc-plc-and-us-based-subsidiary-agree-pay-over-296-million-global-penalties-resolve#:~:text=\(Technip%20USA\)%2C%20have%20agreed,the%20United%20States%20and%20Brazil.&text=Technip%20USA%20and%20Technip's%20former,in%20connection%20with%20the%20resolution](https://www.justice.gov/opa/pr/technipfmc-plc-and-us-based-subsidiary-agree-pay-over-296-million-global-penalties-resolve#:~:text=(Technip%20USA)%2C%20have%20agreed,the%20United%20States%20and%20Brazil.&text=Technip%20USA%20and%20Technip's%20former,in%20connection%20with%20the%20resolution)>; Deferred Prosecution Agreement at A-15, A-18, *United States v. Vitol Inc.*, No. 20-539 (E.D.N.Y. 3 December 2020) [hereinafter Vitol Deferred Prosecution Agreement] <<https://www.justice.gov/criminal-fraud/file/1346651/download>>; Press release, US DOJ, 'Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador' (22 September 2020) [hereinafter Sargeant Marine Press Release] <<https://www.justice.gov/opa/pr/sargeant-marine-inc-pleads-guilty-and-agrees-pay-166-million-resolve-charges-related-foreign>>; Press release, US DOJ, 'Amec Foster Wheeler Energy Limited Agrees to Pay Over \$18 Million to Resolve Charges Related to Bribery Scheme in Brazil' (25 June 2021) <<https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery>>; Press release, US SEC, 'SEC Charges Honeywell with Bribery Schemes in Algeria and Brazil' (19 December 2022) <<https://www.sec.gov/news/press-release/2022-230>>; Press release, US SEC, 'Press Release SEC Charges Global Steel Pipe Manufacturer with Violating Foreign Corrupt Practices Act' (2 June 2022) <<https://www.sec.gov/news/press-release/2022-98>>.

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

Econômica Federal.⁵³ J&F also made bribe payments to an executive at Banco Nacional de Desenvolvimento Econômico e Social (BNDES), another Brazilian state-owned and -controlled bank.⁵⁴

Brazil's formerly state-owned electric utility, Centrais Eletricas Brasileiras SA (Eletrobras), has also been the focus of anti-corruption investigations by both Brazilian and US authorities.⁵⁵ In July 2015, Brazilian authorities arrested the chief executive of Eletrobras and executed nearly two dozen related search warrants.⁵⁶ In October 2016, Eletrobras disclosed that it was cooperating with the US DOJ, the US SEC, Brazilian authorities and others.⁵⁷ In August 2018, Eletrobras disclosed that the US DOJ declined to prosecute the company for FCPA violations but, in December 2018, Eletrobras paid US\$2.5 million to settle US SEC charges that it violated the books and records and internal controls provisions of the FCPA.⁵⁸

Operation Car Wash also brought investigators to state-owned enterprises in other countries. For example, Petróleos Mexicanos (PEMEX) CEO Emilio Lozoya was arrested in connection with crimes identified by *Operation Car Wash*.⁵⁹

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

54 *id.*

55 Eletrobras became a private company on 9 June 2022. Andrade, Vinicius & Viotti Beck, Martha, 'Brazil Set to Privatize Power Firm Eletrobras in \$7 Billion Deal', *Bloomberg* (9 June 2022) <<https://www.bloomberg.com/news/articles/2022-06-09/brazil-set-to-privatize-power-giant-in-7-billion-stock-sale?leadSource=verify%20wall>>.

56 'CEO of Brazil's Eletronuclear Arrested in Wide Corruption Probe' (footnote 52, above).

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

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

59 See Petróleos Mexicanos (Form 6-K) (11 September 2019) <<https://www.pemex.com/ri/reguladores/Informacion%20SEC/Form%206-K%20A,%20filed%20Sep11,%202019.pdf>>; Associated Press 'Judge in Mexico orders ex-head of state oil company jailed' (3 November 2021) <<https://apnews.com/article/business-mexico-caribbean-mexico-city-e2fde527b27b7083c1cee9fa12ef86c5>>.

PEMEX stated that it was cooperating with Mexican, US and other government authorities in connection with the investigation.⁶⁰ As of February 2023, Lozoya is in prison awaiting trial.⁶¹

During the past few years, US authorities have undertaken sweeping investigations of alleged corruption at state-owned and state-controlled entities in Venezuela and Ecuador. These have largely resulted in individual enforcement actions, including indictments against 42 individuals in connection with bribery at *Petróleos de Venezuela S.A. (PdVSA)*,⁶² a Venezuelan state-owned and

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

61 'Audiencia de Emilio Lozoya por el caso Agronitrogenados se difiere al 27 de abril', 24 Horas (16 February 2023) <<https://www.24-horas.mx/2023/02/16/audiencia-de-emilio-lozoya-por-el-caso-agronitrogenados-se-difiere-al-27-de-abril/>>.

62 See 'FCPA Matter Information Multiple Parties' Involvement with PDVSA in Venezuela between 2008 and 2017', Stanford Law School: Foreign Corrupt Practices Act Clearinghouse (24 November 2015) <<https://fcpa.stanford.edu/fcpa-matter.html?id=289>>; Press Release, US DOJ, 'Two Financial Asset Managers Charged in Alleged \$1.2 Billion Venezuelan Money Laundering Scheme' (12 July 2022) <<https://www.justice.gov/opa/pr/two-financial-asset-managers-charged-alleged-12-billion-venezuelan-money-laundering-scheme>>; Press Release, US DOJ, 'Two Former Senior Venezuelan Prosecutors Charged for Receiving Over \$1 Million in Bribes' (8 March 2022) <<https://www.justice.gov/opa/pr/two-former-senior-venezuelan-prosecutors-charged-receiving-over-1-million-bribes>>; Press Release, US DOJ, 'Executive Arrested and Charged for Bribery and Money-Laundering Scheme' (4 August 2021) <<https://www.justice.gov/opa/pr/executive-arrested-and-charged-bribery-and-money-laundering-scheme>>; Press Release, US DOJ, 'Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme' (23 March 2021) <<https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>>; Press Release, US DOJ, 'Venezuelan Business Executive Charged in Connection with International Bribery and Money Laundering Scheme' (25 November 2020) <<https://www.justice.gov/opa/pr/venezuelan-business-executive-charged-connection-international-bribery-and-money-laundering>>; Sargeant Marine Press Release (footnote 51, above); Press Release, US DOJ, 'Texas Businessman Sentenced to 70 Months in Prison for Role in Venezuela Bribery Scheme and Obstruction of Justice' (19 February 2020) <<https://www.justice.gov/opa/pr/texas-businessman-sentenced-70-months-prison-role-venezuela-bribery-scheme-and-obstruction>>; Press Release, US DOJ, 'Florida Businessman Sentenced to 48 Months in Prison for Role in Venezuela Bribery Scheme' (8 January 2020) <<https://www.justice.gov/opa/pr/florida-businessman-sentenced-48-months-prison-role-venezuela-bribery-scheme>>; Press Release, US DOJ, 'Business Executive Pleads Guilty to Foreign Bribery Charges in Connection with Venezuela Bribery Scheme' (29 May 2019) <<https://www.justice.gov/opa/pr/business-executive-pleads-guilty-foreign-bribery-charges-connection-venezuela-bribery-scheme>>; Press Release, US DOJ, 'Two Businessmen Charged with Foreign Bribery in Connection with Venezuela Bribery Scheme' (26 February 2019) <<https://www.justice.gov/opa/pr/two-businessmen-charged-foreign-bribery-connection-venezuela-bribery-scheme>>;

state-controlled oil company, as well as indictments in connection with alleged corruption at Corporación de Abastecimiento y Servicios Agrícola (CASA),⁶³ Venezuela's state-owned food corporation; Comité Local de Abastecimiento y Producción (CLAP),⁶⁴ a Venezuelan state-controlled food and medicine distribution programme; and Petropiar,⁶⁵ a joint venture between Venezuela's state-owned and state-controlled energy company and an American oil company. Similarly, the US DOJ has prosecuted individuals for paying bribes to officials at Empresa

Press Release, US DOJ, 'Texas Businessman Pleads Guilty to Money Laundering Charges in Connection with Venezuela Bribery Scheme' (30 October 2018) <<https://www.justice.gov/opa/pr/texas-businessman-pleads-guilty-money-laundering-charges-connection-venezuela-bribery-scheme>>; Press Release, US DOJ, 'Two Members of Billion-Dollar Venezuelan Money Laundering Scheme Arrested' (25 July 2018) <<https://www.justice.gov/opa/pr/two-members-billion-dollar-venezuelan-money-laundering-scheme-arrested>>; Press Release, US DOJ, 'Businessman Pleads Guilty to Foreign Bribery and Tax Charges in Connection with Venezuela Bribery Scheme' (16 June 2018) <<https://www.justice.gov/opa/pr/businessman-pleads-guilty-foreign-bribery-and-tax-charges-connection-venezuela-bribery-scheme>>; Press Release, US DOJ, 'Five Former Venezuelan Government Officials Charged in Money Laundering Scheme Involving Foreign Bribery' (12 February 2018) <<https://www.justice.gov/opa/pr/five-former-venezuelan-government-officials-charged-money-laundering-scheme-involving-forei-0>>; Press Release, US DOJ, 'Florida Businessman Pleads Guilty to Foreign Bribery Charges in Connection With Venezuela Bribery Scheme' (11 October 2017) <<https://www.justice.gov/opa/pr/florida-businessman-pleads-guilty-foreign-bribery-charges-connection-venezuela-bribery-scheme>>; Press Release, US DOJ, 'Two Businessmen Plead Guilty to Foreign Bribery Charges in Connection with Venezuela Bribery Schemes' (10 January 2017) <<https://www.justice.gov/opa/pr/two-businessmen-plead-guilty-foreign-bribery-charges-connection-venezuela-bribery-schemes>>; Press Release, US DOJ, 'Miami Businessman Pleads Guilty to Foreign Bribery and Fraud Charges in Connection with Venezuela Bribery Scheme' (23 March 2016) <<https://www.justice.gov/opa/pr/miami-businessman-pleads-guilty-foreign-bribery-and-fraud-charges-connection-venezuela>>.

- 63 See Press Release, US DOJ, 'Executive Arrested and Charged for Bribery and Money-Laundering Scheme' (4 August 2021) <<https://www.justice.gov/opa/pr/executive-arrested-and-charged-bribery-and-money-laundering-scheme>>; Indictment, United States v. Naman Wakil, No. 21-20406-CR (S.D. Fla. 29 July 2021) <<https://www.justice.gov/criminal-fraud/file/1430096/download>>.
- 64 See Press Release, US DOJ, 'Five Individuals Charged with Money Laundering in Connection with Alleged Venezuela Bribery Scheme' (21 October 2021) <<https://www.justice.gov/opa/pr/five-individuals-charged-money-laundering-connection-alleged-venezuela-bribery-scheme>>.
- 65 See Press Release, US DOJ, 'Venezuelan Businessman Charged in Bribery and Money Laundering Scheme' (24 August 2022) <<https://www.justice.gov/opa/pr/venezuelan-businessman-charged-bribery-and-money-laundering-scheme>>.

Pública de Hidrocarburos del Ecuador (PetroEcuador),⁶⁶ a state-owned oil company in Ecuador, and Ecuador's state-owned insurance companies, Seguros Sucre S.A. and Seguros Rocafuerte S.A.⁶⁷

While the US DOJ has not yet prosecuted PetroEcuador, it resolved two corporate investigations involving corrupt payments to PetroEcuador.⁶⁸ One of the cases also involved alleged payments to PDVSA officials.⁶⁹ Additionally, in June 2019, Citgo Petroleum Corp (Citgo) confirmed that it received a subpoena requesting information relating to bribery in Venezuela.⁷⁰ Citgo has been implicated in certain individuals' guilty pleas, but has not been publicly charged, nor has it reached a public corporate resolution.⁷¹

Coordination among US enforcement agencies

In May 2018, the US DOJ formalised its position on coordination among US law enforcement and regulatory agencies and their non-US counterparts in a policy requiring US DOJ attorneys to coordinate with other law enforcement partners in the United States and counterparts abroad (the Anti-Piling On Policy).⁷² The

66 See Press Release, US DOJ, 'Businessman Sentenced for Foreign Bribery and Money Laundering Scheme Involving PetroEcuador Officials' (28 January 2021) <<https://www.justice.gov/opa/pr/businessman-sentenced-foreign-bribery-and-money-laundering-scheme-involving-petroecuador>>; Press Release, US DOJ, 'Financial Advisor Pleads Guilty to Money Laundering Charge in Connection With Bribery Scheme Involving Ecuadorian Officials' (11 September 2018) <<https://www.justice.gov/opa/pr/financial-advisor-pleads-guilty-money-laundering-charge-connection-bribery-scheme-involving>>.

67 See Press Release, US DOJ, 'Three Men Charged in Ecuadorian Bribery and Money Laundering Scheme' (19 July 2022) <<https://www.justice.gov/opa/pr/three-men-charged-ecuadorian-bribery-and-money-laundering-scheme>>.

68 See Vitol Deferred Prosecution Agreement (footnote 51, above); Sargeant Marine Press Release (footnote 51, above).

69 See Sargeant Marine Press Release (footnote 51, above).

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

71 *id.*; see, e.g., Press Release, US DOJ, 'Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme' (23 March 2021) <<https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>>; Indictment, *United States v. Jose Luis De Jongh-Atencio*, No. 4:20-CR-305 (S.D. Tex. 16 July 2020) <<https://www.justice.gov/criminal-fraud/file/1307276/download>>.

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

Anti-Piling On Policy recognises that coordination among regulators avoids 'unfair duplicative penalties' that 'deprive a company of the benefits of certainty and finality ordinarily available through a full and final settlement.'⁷³ The policy does not require the US DOJ to refrain from imposing its own penalties. Instead, it merely requires prosecutors to consider whether multiple resolutions are necessary.⁷⁴ To date, the Biden Administration has not signalled an intention to depart from the policy.⁷⁵

Companies whose shares or American Depositary Receipts (ADRs) are publicly traded in the United States are subject to US SEC regulation. These companies may be subject to investigations and penalties by both the US DOJ and US SEC for the same alleged violations of the FCPA. The Anti-Piling On Policy may provide a basis for such companies to contend that the imposition of substantial penalties by both agencies is unnecessary and unwarranted.

Recent enforcement actions suggest that the US DOJ has a continued willingness to decline to prosecute cases involving resolutions with other regulators. For example, of the nine companies to which the US DOJ has issued formal declinations since 2018, five involved publicly traded US companies that reached resolutions with the US SEC,⁷⁶ two involved companies that were under investi-

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

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

75 See Press Release, US DOJ 'Deputy Assistant Attorney General Lisa H. Miller Delivers Remarks at the University of Southern California Gould School of Law on Corporate Enforcement and Compliance' (16 February 2023) <<https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-lisa-h-miller-delivers-remarks-university-southern>>.

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

gation by UK authorities,⁷⁷ and one by German authorities.⁷⁸ Even when the US DOJ provides a formal declination, however, it may still require a company to disgorge ill-gotten profits.⁷⁹

Notwithstanding the Anti-Piling On Policy, the potential for overlapping enforcement remains. The United States Commodity Futures Trading Commission (CFTC) recently entered the foreign-corruption space, despite its stated intention to avoid 'pil[ing] onto other existing investigations.'⁸⁰ In March 2019, the CFTC issued an Enforcement Advisory regarding 'self-reporting and cooperation for violations of the Commodity Exchange Act (CEA) involving foreign corrupt practices' and indicated that the agency would pursue foreign

77 Letter from Daniel S Kahn, Deputy Chief, US DOJ, to Matthew Reinhard, Miller & Chevalier Chartered (20 August 2018) <<https://www.justice.gov/criminal-fraud/page/file/1088621/download>> (noting that one reason for declination was 'the fact that [Guralp Systems Limited], a U.K. company with its principal place of business in the U.K., is the subject of an ongoing parallel investigation by the U.K.'s Serious Fraud Office for violations of law relating to the same conduct and has committed to accepting responsibility for that conduct with the SFO'). The final declination involved a Barbados-based company that earned less than US\$100,000 in illicit profits from the bribery scheme and voluntarily self-disclosed the conduct. Following the declination, US DOJ charged the company's former Chief Executive Officer and Senior Vice President; Letter from Joseph S. Beemsterboer, US DOJ, to F. Joseph Warin, Gibson, Dunn & Crutcher LLP (18 March 2022) <<https://www.justice.gov/criminal-fraud/file/1486266/download>>.

78 Letter from Glenn S Leon, US DOJ, to Peter Spivack, Hogan Lovells US LLP (21 December 2022) <<https://www.justice.gov/criminal-fraud/file/1559236/download>>.

79 See Letter from Craig Carpenito, US Attorney, District of N.J., and Robert Zink, Acting Chief, Fraud Section, Criminal Division, US DOJ, to Karl H Buch and Grayson D Stratton, DLA Piper LLP, and Kathryn H Ruemmler and Douglas N Greenburg, Latham & Watkins LLP (13 February 2019) <<https://www.justice.gov/criminal-fraud/file/1132666/download>>; Letter from Sandra Moser to Caz Hashemi (footnote 76, above).

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

corruption that affected commodities and derivatives markets.⁸¹ Since December 2020, the CFTC has brought two enforcement actions related to foreign corruption.⁸² Two other companies have disclosed ongoing investigations.⁸³

Similarly, *Operation Car Wash* resulted in substantial and, at times, overlapping corporate fines and penalties imposed by US, Latin American and other enforcement and regulatory entities, raising questions about the benefits of the policy when applied in practice. Because Latin American authorities do not have policies similar to the Anti-Piling On Policy, companies that resolve their potential liability in the US without resolving their exposure throughout Latin America may find themselves subject to crippling additional fines and penalties for largely similar or related conduct.⁸⁴

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

82 Press Release, CFTC, 'CFTC Orders Vitol Inc. to Pay \$95.7 Million for Corruption-Based Fraud and Attempted Manipulation' (3 December 2020) <<https://www.cftc.gov/PressRoom/PressReleases/8326-20>>; Press Release, 'CFTC Orders Glencore to Pay \$1.186 Billion for Manipulation and Corruption' (24 May 2022) <<https://www.cftc.gov/PressRoom/PressReleases/8534-22>>.

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

84 Brazil has begun to coordinate penalties among internal regulators, which may signal a willingness to adopt an anti-piling policy. See, e.g., Federative Republic of Brazil, "Acordo de Cooperação Técnica que Entre si Celebram o Ministério Público Federal, a Controladoria-Geral da União (CGU), a Advocacia Geral da União (AGU), o Ministério da Justiça e Segurança Pública (MJSP) e o Tribunal de Contas da União (TCU) em Matéria de Combate à Corrupção no Brasil, Especialmente em Relação aos Acordos de Leniência da Lei No. 12.846, de 2013" [Technical Cooperation Agreement Among the Federal Public Prosecutor's Office, Comptroller-General's Office (CGU), Attorney General's Office (AGU), Ministry of Justice and Public Security (MJSP), and Federal Court of Accounts (TCU) Regarding Anti-Corruption in Brazil, Particularly Leniency Agreements Under Law No. 12.846 of 2013] (6 August 2020) <<http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/Acordo6agosto.pdf>>.

Global coordination

During the past several years, there has also been an increase in global anti-corruption enforcement coordination, particularly with respect to investigations involving Latin America.⁸⁵ As Assistant Attorney General Kenneth A Polite acknowledged in January 2023, '[t]he vast majority of our FCPA resolutions in recent years are the result of cooperation and coordination with foreign and domestic authorities.'⁸⁶ Since 2020, the US DOJ and US SEC reportedly received cooperation from approximately 31 countries in cases brought under the FCPA.⁸⁷ Since 2014, Brazil has assisted in at least 21 US DOJ or US SEC investigations that resulted in corporate resolutions. In some instances, the US DOJ has deferred to foreign authorities' investigations and prosecutions, or credited companies for fines paid to foreign authorities for related conduct.⁸⁸

Recent resolutions of corruption investigations involving conduct in Latin America, including conduct uncovered during *Operation Car Wash*, reflect this increased cooperation. For example, in September 2022, GOL Linhas Aéreas Inteligentes S.A. (GOL) agreed to pay over US\$41 million to resolve parallel investigations by the US SEC, US DOJ, and Brazilian authorities relating to

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

86 Kenneth A Polite, Jr, Remarks at Georgetown Law Center, 'Revisions to the Criminal Division's Corporate Enforcement Policy' (17 January 2023) <<https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>>.

87 Press Release, US DOJ, Former Comptroller General of Ecuador Indicted for Alleged Bribery and Money Laundering Scheme (29 March 2022) <<https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-indicted-alleged-bribery-and-money-laundering-scheme>> (Ecuador, Brazil, Panamá and Curaçao); *United States v. Stericycle, Inc.*, No. 8:22-cr-00345 (D. Md.) (Brazil); *United States v. ABB South Africa (PTY) Ltd.*, No. 1:22-CR-222 (E.D. Va. Dec. 2, 2022) (South Africa); *United States v. Glencore International A.G.* (United Kingdom and Switzerland); *United States v. Goldman Sachs* (Singapore, Malaysia, China); *United States v. Airbus SE*, No. 20-cr-21 (D.D.C. Jan. 31, 2020) (France).

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

improper conduct in Brazil.⁸⁹ Similarly, in April 2022, Stericycle, Inc. agreed to pay more than US\$84 million to resolve parallel investigations by the US SEC, US DOJ and Brazilian authorities regarding misconduct in Argentina, Brazil and Mexico.⁹⁰

In January 2020, Airbus SE agreed to pay combined penalties of more than US\$3.9 billion to resolve charges with the United States, France and the United Kingdom, arising out of a scheme to use third-party business partners to bribe government officials and non-government airline executives.⁹¹ The investigations spanned conduct in more than a dozen countries, including Brazil, Colombia and Mexico. Notably, the UK Serious Fraud Office (SFO) and the French National Financial Prosecutor's Office (PNF) entered into a joint investigation agreement to facilitate their investigations, with each office focusing on conduct in different countries.⁹² Given that Airbus is not a US issuer or domestic concern and that there was only limited territorial contact over the corrupt conduct, the US authorities gave Airbus credit for any payments to the SFO and the PNF.⁹³ To date, Latin American authorities have not publicly announced investigations or charges against Airbus.

89 Press Release, US DOJ, 'GOL Linhas Aéreas Inteligentes S.A. Will Pay Over \$41 Million in Resolution of Foreign Bribery Investigations in the United States and Brazil' (15 September 2022) <<https://www.justice.gov/opa/pr/gol-linhas-reas-inteligentes-sa-will-pay-over-41-million-resolution-foreign-bribery>>.

90 Press Release, US DOJ, 'Stericycle Agrees to Pay Over \$84 Million in Coordinated Foreign Bribery Resolution' (20 April 2022) <<https://www.justice.gov/opa/pr/stericycle-agrees-pay-over-84-million-coordinated-foreign-bribery-resolution>>.

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

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

93 Deferred Prosecution Agreement Paragraph 4, *United States v. Airbus SE*, No. 1:20-cr-00021-TFH (D.D.C. 28 January 2020) <<https://www.justice.gov/criminal-fraud/file/1242051/download>> (noting that Airbus 'is neither a U.S. issuer nor a domestic concern and the territorial jurisdiction over the corrupt conduct is limited; in addition . . . France's and the United Kingdom's interests over the Company's corruption-related conduct, and

Coordination between countries has moved beyond coordinated enforcement and into legislative alignment. Chapter 27 of the United States–Mexico–Canada Agreement (USMCA), which went into effect on 1 July 2020,⁹⁴ requires not only cross-border cooperation between the countries' respective enforcement authorities, but for each country to 'adopt or maintain legislative and other measures' that criminalise bribery, solicitation or acceptance of a bribe and embezzlement or misappropriation of public funds, among other measures.⁹⁵ Each country is generally bound to enforce its anti-corruption laws, but retains discretion with respect to the particular enforcement, and parties do not have a real recourse if they believe another party has failed to enforce its anti-corruption laws in compliance with the USMCA.⁹⁶

Similarly, in November 2021, the Organisation for Economic Co-operation and Development (OECD) Council adopted the 2021 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.⁹⁷ With this Recommendation, the forty-four countries party to the OECD Anti-Bribery Convention, including seven Latin American countries, agree to new measures geared toward 'strengthening enforcement of foreign bribery laws, addressing the demand side of foreign bribery, enhancing international co-operation, introducing principles on the use of non-trial resolutions in foreign bribery cases, incentivising anti-corruption compliance by companies, and providing comprehensive and effective protection for reporting persons.'⁹⁸

jurisdictional bases for a resolution, are significantly stronger, and thus the [DOJ has] deferred to France and the United Kingdom to vindicate their respective interests as those countries deem appropriate, and the [DOJ has] taken into account these countries' determination of the appropriate resolution into all aspects of the U.S. resolution[.]').

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

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

96 *Id.* at Articles 27.6.1-2 and 27.8.1-3.

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

98 *id.*

Individuals

US enforcement

The US DOJ and the US SEC continue to prioritise individual accountability in enforcing the FCPA for conduct in Latin America and elsewhere. US DOJ policy emphasises the importance of pursuing individual criminal liability as the strongest deterrent against future corporate wrongdoing and requires companies to identify individuals who were 'substantially involved in or responsible for the criminal conduct' to earn cooperation credit.⁹⁹ In January 2023, Assistant Attorney General Kenneth A Polite remarked, 'Our number one goal in this area – as we have repeatedly emphasized – is individual accountability. And we can hold accountable those who are criminally culpable – no matter their seniority – when companies come forward and cooperate with our investigation.'¹⁰⁰

This prioritisation has led to an overall increase in FCPA charges against individuals since 2007. In 2022, the US DOJ and US SEC publicly announced 13 charges against individuals.¹⁰¹ Those numbers were 18 in 2021 and 32 in 2020.¹⁰² Even though 13 is substantially below the historical high of 43 in 2019, the US DOJ has charged an average of 23 individuals per year in the past 10 years, up significantly from just nine individuals in 2007.

The US DOJ and the US SEC also continue to rely on cooperating companies to assist in individual prosecutions, a factor the US DOJ has cited in declining to bring corporate criminal charges or in providing cooperation credit.¹⁰³ In October 2021, Deputy Attorney General Monaco announced a more stringent requirement that companies must 'identify all individuals involved in the misconduct'

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

100 Remarks by Kenneth A Polite, Jr (footnote 86, above).

101 Stanford Law School Foreign Corrupt Practices Act Clearinghouse, 2022 FCPA Year in Review (2023) <<https://fcpa.stanford.edu/fcpac-reports/2022-fcpa-year-in-review.pdf>>.

102 *id.*

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

Remarks by Kenneth A Polite, Jr (footnote 86, above).

and provide 'all non-privileged information about individual wrongdoing' to be eligible for any cooperation credit.¹⁰⁴ Under the prior administration's policy, qualifying companies could get cooperation credit for identifying only individuals that were 'substantially involved' in or responsible for potential criminal misconduct.¹⁰⁵ Deputy Attorney General Monaco explained that the prior policy was rescinded because it was vague and 'afford[ed] companies too much discretion in deciding who should and should not be disclosed to the government.'¹⁰⁶

Of the 73 companies that reached large,¹⁰⁷ FCPA-related resolutions with the US SEC or the US DOJ (or both) between 2015 and February 2023, the US government pursued at least 49 individuals related to the conduct of at least 21 companies. Most of the individuals were employed by the settling company or its subsidiaries, held senior positions or were directly involved in authorising, causing or concealing bribe payments. Those individuals prosecuted by the US DOJ who were not directly employed by the settling company were generally third-party consultants who paid bribes on behalf of the company.¹⁰⁸

The United States is also increasingly using sanctions as a tool to curb corruption in Latin America. In particular, the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury can prohibit individuals from entering the US, freeze US assets and prohibit companies owned by sanctioned individuals from conducting business in the US or with US persons or companies.¹⁰⁹ The US Department of State can also bar foreign government officials

104 Remarks by Lisa Monaco, 28 October 2021 (footnote 10, above).

105 *id.*

106 *id.*

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

108 See, e.g., *Rolls-Royce PLC* (Petros Contogouris, Andreas Kohler).

109 See Exec. Order No. 13818, 82 Fed. Reg. 60839 (Dec. 20, 2017); see also Press Release, U.S. Department of the Treasury, 'Combating Global Corruption and Human Rights Abuses' (9 December 2022) ('All property and interests in property of individuals or entities . . . that are in the United States or in the possession or control of U.S. persons are blocked and must be reported to [OFAC.] In addition, any entities that are owned, directly or indirectly, 50 percent or more by one or more blocked persons are also blocked . . . [and] all transactions by U.S. persons or within (or transiting) the United States that involve any property or interests in property of designated or otherwise blocked persons are prohibited. The prohibitions include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any blocked person or the receipt of any contribution or provision of funds, goods, or services from any such person.').

involved in 'significant corruption' and their immediate family members from entering the US.¹¹⁰ The sanctions are meant to support democratic institutions by 'encourag[ing] a positive change of behaviour by the identified persons'.¹¹¹

For example, the US Department of State imposed visa restrictions on the former president of Paraguay, Horacio Cartes Jara, and the current vice-president Hugo Velazquez Moreno, in July and August 2022, respectively.¹¹² Subsequently, in January 2023, OFAC sanctioned both individuals, noting the United States' 'continued commitment to combatting systemic corruption, addressing state capture, bolstering democratic institutions and promoting accountability in Paraguay'.¹¹³ Also in January 2023, the US Department of State designated former President of Panama, Ricardo Alberto Martinelli Berrocal, for accepting bribes in exchange for government contracts while he was President.¹¹⁴ OFAC has also levied sanctions against current and former government officials in Nicaragua, El Salvador and Guatemala.¹¹⁵

110 Section 7031(c) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2018 Pub. L. 115-141, Div. K., 132 Stat. 348 (23 March 2018).

111 Press Release, US Department of the Treasury, 'Treasury Sanctions Six Nicaraguan Officials Ahead of Ortega-Murillo Sham Inauguration' (10 January 2022) <<https://home.treasury.gov/news/press-releases/jy0552>>.

112 Press Release, US Embassy in Paraguay, 'Designation of Former Paraguayan President Horacio Cartes for Involvement in Significant Corruption' (22 July 2022) <<https://py.usembassy.gov/designation-of-former-paraguayan-president-horacio-manuel-cartes-jara-for-involvement-in-significant-corruption/>>; see also Press Release, US Embassy in Paraguay 'Designation of Paraguayan Vice President Hugo Velazquez and EBY Legal Counsel Juan Carlos Duarte for Involvement in Significant Corruption' (22 July 2022) <<https://py.usembassy.gov/designation-of-paraguayan-vice-president-hugo-velazquez-and-eby-legal-counsel-juan-carlos-duarte-for-involvement-in-significant-corruption>>.

113 Press Release, US Department of State, 'Sanctioning Senior Paraguayan Officials for Corruption' (26 January 2023) <<https://www.state.gov/sanctioning-senior-paraguayan-officials-for-corruption/>>.

114 Press Release, US Department of State, 'Designation of Former President of Panama Ricardo Alberto Martinelli Berrocal for Involvement in Significant Corruption' (25 January 2023) <<https://www.state.gov/designation-of-former-president-of-panama-ricardo-alberto-martinelli-berrocal-for-involvement-in-significant-corruption/>>.

115 See Press Release (footnote 111, above) (announcing sanctions of 6 Nicaraguan officials); see also Press release, US Department of the Treasury, 'Treasury Sanctions Over 40 Individuals and Entities Across Nine Countries Connected to Corruption and Human Rights Abuse' (9 December 2022) <<https://home.treasury.gov/news/press-releases/jy1155>> (announcing sanctions of officials from Guatemala and El Salvador for their role in corrupt practices while in office).

Local enforcement in Latin America

While US agencies have pursued bribe payers and facilitators, as well as employees of state-owned enterprises, Latin American authorities have aggressively prosecuted politicians and high-level government officials. In efforts to ensure accountability of government officials, prosecutors have sought to hold former senior politicians in pretrial detention, try them in absentia or imprison them after their conviction is upheld by an appellate court. The latter practice, however, was rejected in Brazil in 2019, when the then-former president, Luiz Inácio Lula da Silva, was released from prison on the basis of a Brazilian Supreme Court decision that defendants cannot be imprisoned until they fully exhaust their appeals, which can take years.¹¹⁶ The Supreme Federal Court quashed Lula's sentence in 2021, and annulled the investigation because the former judge was not considered to be impartial.¹¹⁷ Three years after his imprisonment, Lula was re-elected to serve a third term as president of Brazil.¹¹⁸

Still, aggressive prosecution of high-level officials continues across Latin America. In Peru, for example, every president elected from 1985 to December 2022, 'with the exception of one interim leader who served for just eight months—has either been impeached, imprisoned or sought in criminal investigations.'¹¹⁹ For instance, in February 2023, the Attorney General's Office opened an investigation

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

117 'Brazil: Criminal Proceedings Against Former President Lula da Silva Violated Due Process Guarantees, UN Human Rights Committee Finds', UN (28 April 2022) <<https://www.ohchr.org/en/press-releases/2022/04/brazil-criminal-proceedings-against-former-president-lula-da-silva-violated>>.

118 Rocha, Camilo, 'Lula da Silva Will Return To Brazil's Presidency In Stunning Comeback', CNN (31 October 2022) <<https://www.cnn.com/2022/10/30/americas/brazil-election-lula-da-silva-wins-intl/index.html>>.

119 Bristow, Matthew, 'Impeached, Jailed, Wanted: President Is a Dangerous Job in Peru', *Bloomberg* (9 December 2022) <<https://www.bloomberg.com/news/articles/2022-12-09/impeached-jailed-wanted-president-is-a-dangerous-job-in-peru>>. The list of presidents in the last four decades that has either been impeached, imprisoned or sought in criminal investigations includes Pedro Castillo (2021-2022), Manuel Merino (Nov. 10-15, 2020), Martin Vizcarra (2018-2020), Pedro Pablo Kuczynski (2016-2018), Ollanta Humala (2011-2016), Alan Garcia (1985-1990/2006-2011), Alejandro Toledo (2001-2006) and Alberto Fujimori (1990-2000).

against former president Pedro Castillo for corruption dating back to 2021.¹²⁰ Castillo has been accused of influence peddling, organized crime and being an accomplice to collusion during his administration.¹²¹ Castillo has been detained since December 2022, after he attempted to dissolve congress and was ousted.¹²² Also, in February 2023, the US Department of State agreed to extradite former President Alejandro Toledo to Peru, where he faces corruption charges.¹²³ Toledo was said to have taken a US\$20 million bribe during his term as president.¹²⁴

In Argentina, Cristina Fernández de Kirchner (former President and Senator and current Vice President) was found guilty on 6 December 2022 in a US\$1 billion fraud case, was sentenced to six years in prison and given a lifelong ban on holding public office.¹²⁵ Fernández de Kirchner has temporary immunity due to her current role as vice-president and will not immediately go to jail, but she can appeal her conviction.¹²⁶ A separate case against Fernández de Kirchner was announced in August 2018, triggered by the publication of several notebooks written by the driver of a high-ranking public official in Argentina (*Los Cuadernos: the Notebooks scandal*). The notebooks allegedly detail bribes paid to

120 Madry, Kylie, 'Peru's Top Prosecutor Opens Corruption Probe of Ex-President Castillo', *Reuters* (21 February 2023) <<https://www.reuters.com/world/americas/perus-top-prosecutor-opens-corruption-probe-ex-president-castillo-2023-02-21/>>.

121 Severi, Misty, 'Peru Launches Collusion Investigation Into Former President Pedro Castillo', *Washington Examiner* (22 February 2023) <<https://www.washingtonexaminer.com/news/crime/peru-launches-collusion-investigation-into-former-president>>.

122 See *id.*

123 O'Boyle, Brendan, 'U.S. Agrees To Extradite Former Peruvian President Toledo, Says Peru', *Reuters* (21 February 2023) <<https://www.reuters.com/world/americas/us-agrees-extradite-former-peruvian-president-toledo-peru-attorney-generals-2023-02-22/>>.

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

125 Booth, Amy, 'Argentina's Cristina Fernández Sentenced To Six Years In \$1bn Fraud Case' (6 December 2022) <<https://www.theguardian.com/world/2022/dec/06/cristina-fernandez-de-kirchner-argentina-sentenced-prison-fraud-case>>.

126 Akbarzai, Sahar, 'Argentina's Cristina Fernández De Kirchner Sentenced To Six Years In Prison For Corruption', *CNN* (7 December 2022) <<https://www.cnn.com/2022/12/07/americas/argentina-vice-president-fernandez-de-kirchner-sentenced-intl-hnk/index.html>>.

public officials in connection with contracts for public works.¹²⁷ The scandal has implicated dozens of public officials and business owners. This case is expected to go to trial, possibly in 2023.¹²⁸

In Bolivia, prosecutors issued an arrest warrant for former president Evo Morales, who resigned in October 2019, following a disputed election,¹²⁹ although the arrest warrant was annulled a year later.¹³⁰ In January 2020, the interim government opened a corruption investigation into almost 600 former Morales officials, including the former president.¹³¹ On 4 January 2023, former Bolivian minister of government Arturo Carlos Murillo Prijic was sentenced to 70 months in prison for conspiracy to commit money laundering after he received bribes in exchange for helping a US company win a contract from the Bolivian government.¹³²

In Mexico, the Special Prosecutor's Office for Combating Corruption opened 1,668 investigations between March 2019 and March 2021. Only 2.3 per cent of the complaints it received, though, name a private corporation as an alleged offender.¹³³ The Special Prosecutor's Office has not published additional information regarding the investigations.

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

128 Elliott, Lucinda, 'Argentina's Cristina Fernández de Kirchner convicted of corruption', *Financial Times* (6 December 2022) <<https://www.ft.com/content/553db204-5f14-4f23-b995-616788973cc7>>.

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

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

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

132 Press release, US DOJ, 'Former Bolivian Minister of Government Sentenced for Bribery Conspiracy' (4 January 2023) <<https://www.justice.gov/opa/pr/former-bolivian-minister-government-sentenced-bribery-conspiracy>>.

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

In Ecuador, the former vice-president Jorge Glas was sentenced to six years in prison in December 2017 for corruption unearthed by *Operation Car Wash*.¹³⁴ He was released from prison on 28 November 2022, after a local judge approved alternative corrective measures.¹³⁵ As of November 2019:

*the Attorney General's Office had indicted twenty-four former government and private-sector officials, including [former President] Correa and Glas, in an investigation of an alleged bribery scheme called the '2012–2016 Bribes', involving the Brazilian Odebrecht company and other firms that allegedly financed political party activities and campaigns during the Correa government in exchange for government contracts.*¹³⁶

Correa was convicted in April 2020, sentenced to eight years in prison and banned from serving in politics for 25 years.¹³⁷ Additionally, in February 2022, Ecuador's attorney general announced that she will seek corruption charges against former president Lenín Moreno and 36 others over the construction of the Coca Codo Sinclair hydroelectric plant.¹³⁸ Moreno has denied wrongdoing and called the charges a political distraction.¹³⁹

In Panama, several former ministers and two sons of former president Ricardo Martinelli are currently on trial in connection with bribery and money laundering charges regarding the use of Panamanian corporations to hide bribes to various highly placed government officials of the Martinelli administration.¹⁴⁰

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

135 Correa, Tito, 'Former Ecuador VP released from prison for second time', *Reuters* (28 November 2023) <<https://www.reuters.com/world/americas/former-ecuador-vp-released-prison-second-time-2022-11-29/>>.

136 '2019 Country Reports on Human Rights Practices: Ecuador', US Department of State, Bureau of Democracy, Human Rights and Labor <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/ecuador/>>.

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Martinelli's sons previously served prison time in the US after pleading guilty in connection with a bribery and money laundering scheme.¹⁴¹ In January 2023, the sons returned to Panama, following the completion of their sentences.¹⁴²

Conclusion

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

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