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FCPA ENFORCEMENT AND ANTI-CORRUPTION DEVELOPMENTS: 2019 MID-YEAR REVIEW

Robust FCPA enforcement activity continued in the first half of 2019. The DOJ and the SEC—resolving four and five corporate enforcement actions, respectively—assessed a combined total of \$1.5 billion in corporate penalties, of which \$1.1 billion was assessed by the DOJ and \$421 million by the SEC. These penalty amounts already far surpass the amounts the DOJ and the SEC assessed in all of 2018 (\$597.2 million and \$378.7 million, respectively), which is largely due to the resolutions of long-running investigations of Mobile TeleSystems PJSC (“MTS”) and Walmart, Inc. (“Walmart”).

Consistent with the DOJ’s often stated commitment to prioritizing prosecutions of individuals, FCPA charges were brought against eleven individuals in the first half of 2019. Charges also were unsealed for three individuals who had been charged in December 2018. Five individuals pleaded guilty to FCPA charges and two individuals were convicted of FCPA charges following a jury trial.

In addition to focusing on individual accountability, U.S. authorities continued to highlight themes such as the importance of corporate compliance and providing companies with incentives for self-disclosure. For example, signifying the continued importance of companies maintaining strong compliance programs, the DOJ released updated guidance on how prosecutors evaluate the effectiveness of corporate compliance programs and both the DOJ and the SEC brought enforcement actions in cases in which they deemed a company’s compliance program to be inadequate and created the *potential* for bribery.

And, as in prior years, foreign authorities continued to investigate and prosecute corruption within their own borders.

Our thoughts on the most significant developments in anti-corruption and FCPA enforcement and policy during the first half of 2019 are below.

Corporate Resolutions

Overview

The \$1.5 billion in combined fines, penalties, disgorgement, and pre-judgment interest assessed by the DOJ and the SEC in the first two quarters—which included \$850 million resolutions with MTS and \$282 million resolutions with Walmart—are higher than the total penalties these authorities imposed in all of 2018.¹

Notably, two of the six corporate resolutions (Telefônica Brasil S.A., Walmart) announced in 2019 were prosecuted as compliance failure or “risk of bribery” cases, although in the latter case the misconduct described by the government included corrupt payments to government officials. These resolutions reflect the DOJ’s and the SEC’s continued reliance on the FCPA’s accounting provisions in cases in which they believe an issuer’s inadequate compliance program creates the potential for bribery, even when the evidence does not support—or the government chooses not to charge—violations of the FCPA’s anti-bribery provisions.

The DOJ announced only one declination pursuant to its FCPA Corporate Enforcement Policy, declining to prosecute Cognizant Technology Solutions Corp.² The DOJ required Cognizant to pay disgorgement, which it calculated as the amount representing “all profits fairly attributable to the bribery conduct, as determined through a cost avoidance calculation.”³ In a related civil enforcement action, without explanation, the SEC calculated disgorgement as \$3 million less than the amount calculated by the DOJ.⁴

U.S. authorities apparently closed their investigations, without issuing public declination letters, into at least four companies that had been under investigation for potential corruption offenses. Two companies announced declinations by both the DOJ and the SEC (Par Technology Corp., OSI Systems Inc.) and two companies announced declinations by the SEC (Misonix, Inc., Gerdau, S.A.).⁵

¹ See Paul, Weiss Client Memorandum, “FCPA Enforcement and Anti-Corruption Developments: 2018 Year in Review” (Jan. 17, 2019), available [here](#).

² See Letter from Craig Carpenito & Robert Zink to Karl H. Buch et al. (Feb. 13, 2019), available [here](#).

³ *Id.* (requiring Cognizant to pay disgorgement of approximately \$19.4 million).

⁴ See *In the Matter of Cognizant Technology Solutions Corp.*, Exchange Act Release No. 85149, at 7 (Feb. 15, 2019), available [here](#).

⁵ See Par Technology Corp., Form 10-Q (May 7, 2009), available [here](#); Gerdau S.A., Form 6-K, Ex. 99.1 (May 8, 2019), available [here](#); Press Release, OSI Systems, Inc., *OSI Systems Notified That U.S. DOJ and SEC FCPA Inquiries Have Been Closed* (June 5, 2019), available [here](#); Press Release, Misonix, Inc., *SEC Investigation of Misonix, Inc. Ends With No Action* (June 20, 2019), available [here](#).

Review of Select Corporate Resolutions

We discuss below select corporate enforcement resolutions from the first two quarters of 2019.

MTS

On March 6 and 7, 2019, the DOJ and the SEC announced settlements with MTS, Russia's largest telecommunications provider, involving violations of the FCPA.⁶ The resolutions, which include penalties, forfeiture, and disgorgement totaling \$850 million, relate to a scheme to bribe Uzbek officials—including Gulnara Karimova, the daughter of the former president of Uzbekistan—to obtain and retain business in Uzbekistan that is similar to the scheme that led to the \$795 million resolutions in 2016 with VimpelCom Limited, a Netherlands-based telecommunications company, and the \$965 million resolutions in 2017 with Telia Company AB, a telecommunications company based in Sweden.

The DOJ filed a two-count criminal information in the United States District Court for the Southern District of New York charging MTS, a foreign “issuer” within the meaning of the FCPA, with conspiracy to violate the FCPA and violations of the books and records and internal controls provisions of the FCPA. MTS entered into a deferred prosecution agreement with the DOJ and agreed to pay a criminal fine and forfeiture in the amount of \$850 million. KolorIt Dizayn Ink LLC (“KolorIt”), a wholly-owned subsidiary of MTS, pleaded guilty to a charge of conspiracy to violate the FCPA. The \$850 million penalty includes a criminal fine of \$500,000 plus forfeiture of an additional \$40 million that MTS agreed to pay on KolorIt's behalf. MTS also consented to the SEC's order finding that it violated the FCPA's anti-bribery, books and records, and internal accounting control provisions, and requiring it to pay a \$100 million civil penalty. Pursuant to the DOJ's “no piling-on” policy, the DOJ agreed to credit the \$100 million penalty that MTS pays to the SEC. Under the deferred prosecution agreement with the DOJ and the SEC's order, the company must also retain an independent compliance monitor for at least three years.

Combined with the resolutions with VimpelCom and Telia, the resolution with MTS brings the total fines, criminal forfeiture, and disgorgement assessed by the DOJ and the SEC against bribe payors in the Uzbekistan telecommunications market scandal to over \$2.6 billion. Those resolutions relied on extensive international cooperation between the U.S. enforcement agencies and authorities in numerous European countries.

⁶ See Letter from Robert A. Zink et al. to Gary DiBianco, et al. (Feb. 22, 2019), available [here](#); *In the Matter of Mobile TeleSystems PJSC*, Exchange Act Release No. 85261 (Mar. 6, 2019), available [here](#); see also Paul, Weiss Client Memorandum, “Mobile TeleSystems PJSC Reaches \$850 Million Resolutions with DOJ and SEC Over FCPA Violations” (Mar. 12, 2019), available [here](#).

In addition, the DOJ brought FCPA and money laundering conspiracy charges against a former executive of Uzdurobita LLC, a telecommunications operator in Uzbekistan and an MTS subsidiary.⁷ The DOJ also brought money laundering charges, but not FCPA charges, against Karimova, who is serving a prison sentence in Uzbekistan for embezzlement and extortion.⁸ The United States does not have an extradition agreement with Uzbekistan.

Telefônica Brasil

On May 9, 2019, the SEC assessed a \$4.1 million civil penalty against Telefônica Brasil to resolve allegations that the company's internal accounting controls failed to protect sufficiently against the risk that things of value, including World Cup tickets and related hospitality, would be given improperly to government officials, and that the company inaccurately recorded such expenses in its books and records, all in violation of the accounting provisions of the FCPA.⁹ Telefônica Brasil agreed to settle the allegations without admitting or denying the SEC's findings.

The SEC alleged that Telefônica Brasil, a subsidiary of Telefônica S.A., a Spanish multinational broadband and telecommunications provider, failed to devise and maintain sufficient internal accounting controls over a hospitality program that the company hosted in connection with the 2014 World Cup and the 2013 Confederations Cup. Telefônica Brasil, a foreign issuer whose ADRs trade on the New York Stock Exchange, allegedly offered and provided tickets and hospitality to government officials who were directly involved with, or in a position to influence, government actions affecting the company's business. In total, Telefônica Brasil allegedly provided World Cup and Confederations Cup tickets and related hospitality with a combined total value of nearly \$740,000 to approximately 127 government officials between 2012 and 2014.

According to the SEC, although Telefônica Brasil had in place a general code of ethics that prohibited these gifts to public officials, it was not followed due to a lack of internal accounting controls, a compliance breakdown, and a deficient internal audit function. Additionally, the SEC alleged that, because the company recorded the ticket purchases and hospitality as being for general advertising and publicity purposes, when in fact the tickets and related hospitality were given to government officials, Telefônica Brasil's books and records did not, in reasonable detail, accurately and fairly reflect the disposition of the company's assets.

⁷ See Indictment, *U.S. v. Karimova*, No. 19-CR-165 (S.D.N.Y. Mar. 7, 2019).

⁸ See Lisa Lambert & Chris Sanders, *U.S. Indicts Gulnara Karimova in Uzbek Corruption Scheme*, REUTERS (Mar. 7, 2019), available [here](#).

⁹ See *In the Matter of Telefônica Brasil S.A.*, Exchange Act Release No. 85819 (May 9, 2019), available [here](#); see also Paul, Weiss Client Memorandum, "SEC Fines Telefônica Brasil S.A. \$4.125 Million Relating to World Cup Tickets Given to Government Officials" (May 13, 2019), available [here](#).

The Telefônica Brasil settlement—like other resolutions over the years—demonstrates that providing travel and hospitality to government officials without adequate controls and oversight is a high risk activity from an FCPA perspective. This settlement also reflects the SEC’s willingness to bring enforcement actions exclusively under the FCPA’s accounting provisions—even if there is no evidence of a quid pro quo or any improperly awarded business or government action—where the SEC is not satisfied that the issuer’s internal accounting controls and anti-corruption compliance program are sufficient to manage corruption risks adequately. That is, the SEC may bring an enforcement action when it believes that anti-corruption compliance controls leave an unacceptable level of risk of bribery.

Walmart

On June 20, 2019, the DOJ and the SEC announced long-awaited resolutions with Walmart for violations of the books and records and internal accounting provisions of the FCPA.¹⁰ In addition to entering into a three-year non-prosecution agreement and agreeing to the imposition of a compliance monitor for two years, Walmart agreed to pay approximately \$138 million to settle the DOJ’s criminal charges and \$144 million to resolve parallel civil charges brought by the SEC. Walmart also consented to the SEC’s finding that it violated the books and records and internal accounting provisions of the FCPA. WMT Brasilia, S.a.r.l. (“WMT”), Walmart’s wholly-owned Brazilian subsidiary, pleaded guilty in connection with the resolution.

The DOJ and the SEC alleged that from 2000 until 2011 Walmart personnel responsible for implementing and maintaining the company’s internal accounting controls were aware of certain compliance failures, including relating to potentially improper payments to government officials. The internal controls failures allowed Walmart’s foreign subsidiaries in Brazil, China, Mexico, and India to hire third-party intermediaries without establishing sufficient controls to prevent those intermediaries from making improper payments to government officials in return for store permits and licenses. In a number of instances, shortcomings in Walmart’s internal accounting controls at these foreign subsidiaries were reported to senior Walmart executives. The internal controls failures allowed the foreign subsidiaries to open stores faster than they otherwise would have been able, enabling Walmart to earn additional and improper profits through these subsidiaries.

According to the DOJ, these violations were attributable, at least in part, to a policy that favored rapid international expansion over compliance. As Assistant Attorney General Brian A. Benczkowski observed, “Walmart profited from rapid international expansion, but in doing so chose not to take necessary steps to

¹⁰ See Letter from Robert Zink to Karen P. Hewitt (June 20, 2019), available [here](#); *In the Matter of Walmart, Inc.*, Exchange Act Release No. 86159, ¶¶ 48-51 (June 20, 2019), available [here](#); see also Paul, Weiss Client Memorandum, “Walmart Agrees to Pay \$282 Million to Resolve DOJ and SEC FCPA Charges” (June 25, 2019), available [here](#).

avoid corruption.”¹¹ These compliance failures precipitated an eight-year internal investigation and extensive remediation, as well as numerous lawsuits, generating legal fees and other expenses nearing \$1 billion, excluding the \$282 million settlement. Indeed, in fiscal years 2016 through 2018 alone, the company spent more than \$265 million on investigations and compliance enhancements.¹²

The DOJ and SEC settlements with Walmart were based on violations of the FCPA’s accounting provisions without any anti-bribery charges. Neither the DOJ nor the SEC charged actual knowledge or even willful blindness of actual bribery on the part of Walmart, notwithstanding the numerous allegations of improper payments to foreign officials, of knowledge, across multiple subsidiaries and to some degree at the parent company, of deficient controls, and of awareness that Walmart was expanding internationally at an expedited rate.

TFMC

On June 25, 2019, the DOJ announced a resolution with Technip FMC PLC (“TFMC”), a London-headquartered, global provider of oil and gas technology and services that is listed on the New York Stock Exchange, for conspiracy to violate the FCPA’s anti-bribery provisions.¹³ TFMC was created by the 2017 merger of Paris-based Technip S.A. and Houston-based FMC Technologies, Inc.

TFMC entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay a combined total criminal fine of more than \$296 million to resolve charges with the DOJ and with the Advogado-Geral da União (“AGU”), the Controladoria-Geral da União (“CGU”), and the Ministério Público Federal (“MPF”) in Brazil.¹⁴ TFMC agreed to pay approximately \$82 million in fines to the DOJ, which also will credit the \$214 million that TFMC pays to the Brazilian authorities. As a part of the DOJ resolution, Technip USA, Inc., TFMC’s wholly-owned U.S. subsidiary, pleaded guilty to one count of conspiracy to violate the FCPA’s anti-bribery provisions.¹⁵ The DOJ also announced that Zwi Skornicki, formerly a consultant to TFMC, pleaded guilty in the Eastern District of New York to a one-count criminal information

¹¹ Press Release, Dep’t of Justice, *Walmart Inc. and Brazil-Based Subsidiary Agree to Pay \$137 Million to Resolve Foreign Corrupt Practices Act Case* (June 20, 2019), available [here](#).

¹² See Walmart Inc., Annual Report, Form 10-K, 80 (Mar. 30, 2018), available [here](#).

¹³ See Deferred Prosecution Agreement, *U.S. v. TechnipFMC plc*, No. 19-CR-278 (E.D.N.Y. June 25, 2019); see also Paul, Weiss Client Memorandum, “TechnipFMC Agrees to Pay \$296 Million in Global Settlement to Resolve Criminal FCPA Charges; SEC Civil Charges Pending” (Jul. 2, 2019), available [here](#).

¹⁴ The DOJ also recognized the significant assistance provided by the governments of Australia, France, Guernsey, Italy, Monaco, and the United Kingdom. See Press Release, Dep’t of Justice, *TechnipFMC PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019) (hereinafter, “DOJ TFMC Press Release”), available [here](#).

¹⁵ See Plea Agreement, *U.S. v. Technip USA, Inc.*, No. 19-CR-279 (E.D.N.Y. Jun. 25, 2019).

charging him with conspiracy to violate the FCPA.¹⁶ In addition, TFMC announced that it had reached an agreement in principle with the SEC, subject to final SEC approval.¹⁷

The charges arose from two bribery schemes: one by TFMC's pre-merger predecessor company, Technip S.A., to pay bribes to Brazilian officials, and one by its other pre-merger predecessor, FMC Technologies, Inc., to pay bribes to Iraqi officials.¹⁸ From 2003 to 2013, TFMC allegedly conspired with others, including Keppel Offshore & Marine Ltd. ("KOM")—which entered into its own settlement with the DOJ for related FCPA violations in December 2017—to make corrupt payments in Brazil. TFMC, Technip USA, KOM, and Skornicki are charged with conspiring to pay more than \$69 million in bribes to employees of *Petróleo Brasileiro SA* ("Petrobras"), the Brazilian state-owned energy company, as well as to certain Brazilian political candidates and their political party, in return for contracts related to oil and gas projects. TFMC also is charged with conspiring with others to bribe officials at the Iraqi Ministry of Oil and at the South Oil Company and the Missan Oil Company, both state-owned oil companies, from 2008 to 2013, to win contracts to provide metering technologies for oil and gas production measurement to the Iraqi government.

These resolutions highlight the perils associated with successor liability. TFMC inherited significant FCPA liabilities in the course of its 2017 merger. In 2010, Technip S.A., American Depository Shares of which traded on the New York Stock Exchange between August 2001 and November 2007, entered into a two-year deferred prosecution agreement and a \$240 million settlement with the DOJ for participating in a scheme to bribe Nigerian government officials to obtain engineering, procurement, and construction contracts.¹⁹ Certain of the company's offenses in Brazil and Iraq occurred during the pendency of the 2010 deferred prosecution agreement and while Technip S.A. was subject to the oversight of a corporate compliance monitor.²⁰

¹⁶ See DOJ TFMC Press Release, *supra*.

¹⁷ See Press Release, TechnipFMC, *TechnipFMC Reaches Global Resolution of U.S. and Brazilian Legacy Investigations* (June 25, 2019), available [here](#).

¹⁸ DOJ TFMC Press Release, *supra*.

¹⁹ See Criminal Information, *U.S. v. TechnipFMC plc*, No. 19-CR-278, ¶ 3; see also Press Release, Dep't of Justice, *Technip S.A. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$240 Million Criminal Penalty* (Jun. 28, 2010), available [here](#).

²⁰ See Deferred Prosecution Agreement, *U.S. v. TechnipFMC plc*, No. 19-CR-278 (E.D.N.Y. June 25, 2019), ¶ 4(i).

TFMC is currently cooperating with a corruption investigation by the French Parquet National Financier (“PNF”) related to historical projects in Equatorial Guinea and Ghana and has set aside an additional \$70 million in connection with this investigation.²¹

DOJ Developments

Revised Corporate Enforcement Policy

On March 8, 2019, the DOJ announced several revisions to the FCPA Corporate Enforcement Policy.²² One revision removes the policy’s prior requirement that companies prohibit employees from using self-destructing messaging services such as Snapchat. Under the new policy, companies must “implement[] appropriate guidance and controls on the use of personal communications and ephemeral messaging platforms that undermine the company’s ability to appropriately retain business records or communications.”²³

Other revisions codify changes previously announced in speeches, such as extending the policy’s presumption of a declination to companies that, through timely due diligence during a mergers and acquisitions process, uncover corrupt conduct, voluntarily disclose such conduct, and provide full cooperation in an ensuing investigation. This revision codifies the existing guidance provided in a speech last year by Deputy Assistant Attorney General Matthew S. Miner.²⁴ Under the revised policy, a successor company may be eligible for a declination even if the entity it acquired presented aggravating circumstances, such as when the acquired entity’s past leadership was complicit in corruption but the successor company removed that leadership.²⁵ According to Assistant Attorney General Benczkowski, the revisions set forth updated, practical definitions, with the expectation that the revised policy will “bring it

²¹ See Press Release, TechnipFMC, *TechnipFMC Reaches Global Resolution of U.S. and Brazilian Legacy Investigations* (June 25, 2019), available [here](#).

²² See Dep’t of Justice, Justice Manual, § 9-47.120 (revised Nov. 2018) (hereinafter, “Revised Corporate Enforcement Policy”), available [here](#); see also Paul, Weiss Client Memorandum, “DOJ, FBI, and CFTC Announce FCPA Policy Revisions and Initiatives” (Mar. 15, 2019), available [here](#).

²³ Revised Corporate Enforcement Policy, *supra*.

²⁴ Matthew S. Miner, Deputy Assistant Att’y Gen., Dep’t of Justice, *Remarks at the American Conference Institute 9th Global Forum on Anti-Corruption Compliance in High Risk Markets* (July 25, 2018), available [here](#); see also Dep’t of Justice & Sec. Exch. Comm’n, *A Resource Guide to the U.S. Foreign Corrupt Practices Act 28-33* (Nov. 14, 2012), available [here](#).

²⁵ Brian A. Benczkowski, Assistant Att’y Gen., Dep’t of Justice, *Remarks at the 33rd Annual ABA National Institute on White Collar Crime Conference* (Mar. 8, 2019), available [here](#).

in line with current practice” at the DOJ and “avoid[] chilling acquisition activity by law-abiding companies, who might otherwise walk away from worthwhile investments due to the risk of FCPA enforcement.”²⁶

Similarly, the revised policy codifies remarks made by then-Deputy Attorney General Rod Rosenstein in a speech last year to relax a key component of the so-called “Yates Memo”: the DOJ will no longer require companies seeking to qualify for voluntary disclosure credit to provide information on all employees tied to the misconduct, which Rosenstein described as “not practical.”²⁷ The revised policy now requires that companies simply disclose information about “all individuals substantially involved” in the misconduct.²⁸

Updated Guidance for Evaluating Corporate Compliance Programs

On April 30, 2019, the DOJ’s Criminal Division released updated guidance on how prosecutors evaluate the effectiveness of corporate compliance programs, which includes, but is not limited to, anti-corruption compliance programs.²⁹ The updated guidance, entitled Evaluation of Corporate Compliance Programs, expands on the guidance released by the Fraud Section in February 2017. When announcing the updated guidance, Assistant Attorney General Benzckowski noted that it is intended to “harmonize the prior Fraud Section publication with other DOJ guidance and legal standards,” and “provide additional transparency in how [the DOJ] will analyze a company’s compliance program.”³⁰ The updated guidance provides a framework for how prosecutors will assess compliance programs as they consider potential enforcement actions, and it complements the DOJ training programs, announced last October, designed to enhance prosecutors’ understanding of compliance. Despite the new detail provided by the updated guidance, the DOJ continues to make individualized determinations in each case and, as Assistant Attorney General Benzckowski explained, continues to eschew “any rigid formula to assess the effectiveness of corporate compliance programs.”³¹

The updated guidance focuses on the same topics as the 2017 guidance, which included the company’s analysis and remediation of the underlying misconduct; the conduct of its senior and middle management; the autonomy and resources of its compliance function; its policies and procedures; risk assessment;

²⁶ *Id.*

²⁷ See Rod J. Rosenstein, Deputy Att’y Gen., Dep’t of Justice, *Remarks at the American Conference Institute’s 35th International Conference on the Foreign Corrupt Practices Act* (Nov. 29, 2018), available [here](#).

²⁸ Revised Corporate Enforcement Policy, *supra*.

²⁹ See Dep’t of Justice, Criminal Division, *Evaluation of Corporate Compliance Programs at 1* (Apr. 30, 2019), available [here](#); see also Paul, Weiss Client Memorandum, “DOJ Updated Guidance for Evaluating Corporate Compliance Programs Focuses on Effectiveness” (May 6, 2019), available [here](#).

³⁰ Brian A. Benzckowski, Assistant Att’y Gen., Dep’t of Justice, *Keynote Address at the Ethics and Compliance Initiative (ECI) 2019 Annual Impact Conference* (Apr. 30, 2019), available [here](#).

³¹ *Id.*

training and communication; confidential reporting; incentives for compliance and non-compliance; periodic testing and review; and monitoring of third-party relationships and potential mergers and acquisitions.³² The updated guidance, however, gives considerably more context and is structured around three key questions concerning a compliance program's design, implementation, and function: (1) Is the corporation's compliance program well designed? (2) Is the program being applied earnestly and in good faith? (In other words, is the program being implemented effectively?) and (3) Does the corporation's compliance program work in practice?

Organizing the evaluation of corporate compliance programs around three central questions provides a useful framework for designing, implementing, and testing a compliance program, including by better enabling companies to identify business risks, mitigate them, and remediate shortcomings. In addition to this framework, the updated guidance provides background for the factors that grounds each in the wider context of compliance.

China Initiative

Following the DOJ's announcement in November 2018 of the "China Initiative"—an effort to counter perceived national security threats to the United States from China, including by identifying FCPA cases involving Chinese companies that compete with American businesses—Attorney General William Barr declared in June 2019 that the DOJ must “continue to pursue, and indeed step up, our China initiative.”³³

As part of the Initiative, in January 2019, the DOJ announced dual indictments against China-based Huawei Technologies, the world's largest telecommunications equipment manufacturer, and its affiliates, charging the defendants with financial fraud, money laundering, sanctions violations, and obstruction of justice.³⁴

In April 2019, the DOJ unsealed charges against two individuals in connection with an espionage scheme to benefit Chinese state-owned institutions.³⁵ In a press release announcing the indictments, Assistant Director John Brown of the FBI's Counterintelligence Division stated that “China continues to support behavior that violates the rule of law,” and DOJ National Security Division Assistant Attorney General John

³² See Dep't of Justice, Criminal Division, Fraud Section, Evaluation of Corporate Compliance Programs (Feb. 8, 2017); see also Paul, Weiss Client Memorandum, “DOJ Releases Guidance for Evaluating Corporate Compliance Programs” (Mar. 20, 2017), available [here](#).

³³ See William P. Barr, Att'y Gen., Dep't of Justice, *Opening Remarks at the U.S. Attorney's Conference* (June 26, 2019), available [here](#).

³⁴ See Superseding Indictment, *U.S. v. Huawei Tech. Co.*, No. 18-CR-457 (E.D.N.Y. Jan. 24, 2019); Indictment, *U.S. v. Huawei Device Co.*, No. 19-CR-010 (W.D. Wash. Jan. 16, 2019).

³⁵ See Indictment, *U.S. v. Zheng*, No. 19-CR-156 (N.D.N.Y. Apr. 18, 2019).

Demers added that the DOJ will enhance partnerships with the private sector as part of the China Initiative.³⁶ Since the announcement of the China Initiative, there have been no new publicly-reported FCPA investigations of Chinese companies, although there have been public reports of such investigations in the past,³⁷ and of course it is difficult to ascertain what confidential investigations might be underway.

SEC Developments

New Approach to Contemporaneous Settlement Offers and Waiver Requests

On July 3, 2019, as part of the SEC's efforts to improve the effectiveness and efficiency of settlement negotiations, SEC Chairman Jay Clayton announced a new approach to how the SEC will consider contemporaneous settlement offers and waiver requests from defendants.³⁸

As Chairman Clayton explained in announcing the new approach, the imposition of certain types of relief by the SEC and other authorities in connection with settlement agreements can have significant collateral consequences. In certain cases, these collateral consequences may not be appropriate, including because other measures may more appropriately address the conduct at issue and related investor protection considerations. In many cases, the SEC has the authority to grant a waiver from these collateral consequences, either in full or subject to conditions. Parties seeking settlements with the SEC consequently often make contemporaneous settlement offers and waiver requests.

Previously, the SEC's practice in determining whether to grant or deny a waiver request made contemporaneously with a settlement offer was to decide the two matters separately and independently. According to Chairman Clayton, this practice "may not produce the best outcome for investors in all circumstances," including because it can complicate and lengthen the negotiating process and can unnecessarily burden SEC resources. Accordingly, Chairman Clayton announced that a settling entity can request that the SEC consider a settlement offer that simultaneously addresses both the underlying enforcement action and any related collateral consequences. He explained that this approach will enable the SEC "to consider the proposed settlement and waiver request contemporaneously, along with the relevant facts and conduct, and the analysis and advice of the relevant [SEC] divisions to assess whether the proposed resolution of the matter in its entirety best serves investors and the [SEC's] mission more generally."

³⁶ See Press Release, Dep't of Justice, *Former GE Engineer and Chinese Businessman Charged with Economic Espionage and Theft of GE's Trade Secrets* (Apr. 23, 2019), available [here](#).

³⁷ See, e.g., Hugo Miller and Tom Schoenmerg, *Chinese Oil Giant Sinopec Probed by the U.S. Over Nigeria Bribery Allegations*, BLOOMBERG (Aug. 30, 2017), available [here](#).

³⁸ See Jay Clayton, Chairman, Sec. Exch. Comm'n, *Statement Regarding Offers of Settlement* (July 3, 2018), available [here](#).

Whistleblower Awards

In May 2019, the SEC issued its first ever whistleblower award under Rule 21F-4(c) of the Securities Exchange Act of 1934, which is a provision of the whistleblower rules designed to incentivize internal reporting by whistleblowers who also report to the SEC within 120 days.³⁹

The SEC awarded more than \$4.5 million to a whistleblower who sent an anonymous tip to a company alleging significant unspecified wrongdoing and submitted the same information to the SEC within 120 days of reporting it to the company. According to the SEC, the information prompted the company to report the allegations to the SEC, which, in turn, opened its own investigation.⁴⁰

Separately, a purported whistleblower sued the SEC for “unreasonably delaying” a decision on whether to issue a whistleblower award after the tipster alerted the SEC about FCPA violations by Teva Pharmaceutical Industries Ltd. in 2011.⁴¹ Teva agreed to pay nearly \$520 million in criminal and regulatory penalties to the DOJ and the SEC in December 2016. The whistleblower allegedly submitted a claim for an award in April 2017 and is now seeking an order directing the SEC to issue a preliminary determination regarding his claim. The SEC is challenging the petition because it would “upset the Commission’s judgment regarding the most effective way to prioritize” its whistleblower claims review process.⁴² In its filing, the SEC noted that the SEC’s Office of the Whistleblower has proposed amendments to the SEC’s whistleblower regulations that “would create a summary disposition process that would allow for a more streamlined review of applications.” The SEC added that it is reviewing comments and finalizing recommendations regarding the rulemaking.⁴³

CFTC Developments

On March 6, 2019, Director of Enforcement of the U.S. Commodity Futures Trading Commission (“CFTC”) James M. McDonald announced for the first time the CFTC’s commitment to investigating cases involving foreign corrupt practices in violation of the Commodity Exchange Act (“CEA”), and the CFTC published a new Enforcement Advisory that announced a leniency program for companies and individuals who

³⁹ See Press Release, Sec. Exch. Comm’n, *SEC Awards \$4.5 Million to Whistleblower Whose Internal Reporting Led to Successful SEC Case and Related Action* (May 24, 2019), available [here](#).

⁴⁰ See *id.*; see also *In the Matter of the Claim for Award*, Exchange Act Release No. 85936 (May 24, 2019), available [here](#).

⁴¹ See Petition for Writ of Mandamus, *In re John Doe*, No. 19-1095 (D.C. Cir. Apr. 29, 2019).

⁴² See SEC’s Verified Opposition to John Doe’s Mandamus Petition at 4, *In re John Doe*, No. 19-1095 (D.C. Cir. July 11, 2019).

⁴³ *Id.* at 13.

cooperate and self-report foreign corrupt practices to the CFTC.⁴⁴ Director McDonald also disclosed that the CFTC already had open investigations involving corruption in commodities markets.

The announcements characterized the CFTC's involvement in foreign bribery investigations as part of a continued effort among U.S. agencies to coordinate the investigation of foreign corrupt practices and the imposition of corporate penalties to avoid "piling on," though at the same time it marks a new programmatic effort by the CFTC to address foreign bribery in the commodities markets. In remarks at the American Bar Association's National Institute on White Collar Crime, Director McDonald emphasized coordination efforts among the CFTC, the DOJ, and the SEC, noting that the CFTC is working closely with these enforcement agencies "to avoid duplicative investigative steps."⁴⁵ Director McDonald said that the CFTC will not "pile onto" other existing investigations and that it will provide dollar-for-dollar credit for disgorgement or restitution payments in related actions when it imposes monetary penalties. He added that the CFTC Whistleblower Program, established in 2011 under the Dodd-Frank Act, will apply to CEA violations involving foreign corruption. To date, the CFTC has granted nine whistleblower awards totaling more than \$87 million, with 2018 seeing a record number of whistleblowers and awards.⁴⁶

Although the CEA does not penalize corruption, Director McDonald—a former Assistant U.S. Attorney in the Public Corruption Unit for the Southern District of New York—identified several examples of corrupt practices that "might constitute fraud, manipulation, false reporting, or a number of other types of violations under the CEA," including: bribes to secure business in connection with regulated activities like trading, advising, or dealing in swaps or derivatives; corrupt practices used to manipulate benchmarks that serve as the basis for related derivatives contracts; prices that are the product of corruption and are falsely reported to benchmarks; or corrupt practices that alter the prices in commodity markets that drive U.S. derivatives prices.⁴⁷

The CFTC's commitment to investigating foreign corrupt practices is not entirely new, but arises out of the agency's efforts to charge cases in parallel with FCPA investigations.⁴⁸ For instance, on June 4, 2018, the DOJ announced an FCPA resolution involving Société Générale S.A., a Paris-based financial services

⁴⁴ James M. McDonald, Commodity Futures Trading Commission Director of Enforcement, *Remarks at the American Bar Association's National Institute on White Collar Crime* (Mar. 6, 2019) (hereinafter, "McDonald Remarks"), available [here](#); see also Paul, Weiss Client Memorandum, "DOJ, FBI, and CFTC Announce FCPA Policy Revisions and Initiatives" (Mar. 15, 2019), available [here](#).

⁴⁵ McDonald Remarks, *supra*.

⁴⁶ See Commodity Futures Trading Commission, *2018 Annual Report on the Division of Enforcement* at 14 (Nov. 2018), available [here](#).

⁴⁷ McDonald Remarks, *supra*.

⁴⁸ See Commodity Futures Trading Commission, *2018 Annual Report on the Division of Enforcement* at 12-13 (Nov. 2018), available [here](#).

company, which agreed to pay over \$860 million in penalties to resolve criminal charges in France and the U.S. in connection with charges of bribery and interest rate manipulation.⁴⁹ On the same day, the CFTC accepted a settlement offer ordering Société Générale to pay \$475 million in regulatory penalties and disgorgement in connection with similar interest rate manipulation charges.⁵⁰

The CFTC's related Advisory on Self Reporting and Cooperation for CEA Violations Involving Foreign Corrupt Practices provides incentives to report CEA violations involving foreign corrupt practices.⁵¹ Absent aggravating circumstances, that Advisory provides a presumption that the CFTC Enforcement Division will recommend a resolution with no civil monetary penalty if a company or individual that is not registered with the CFTC timely and voluntarily self-discloses, fully cooperates, and appropriately remediates. Aggravating circumstances that may negate the presumption include, but are not limited to, involvement by executive management of the company in the misconduct, pervasiveness of the misconduct within the company, and recidivism. In all instances, the CFTC Enforcement Division will "still require payment of all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue."⁵²

Individual Prosecutions

Consistent with its stated commitment to prioritizing prosecutions of individuals,⁵³ the DOJ has remained active in pursuing such prosecutions.

Based on publicly available records, FCPA charges were brought against eleven individuals in the first half of the year.⁵⁴ The DOJ charged all eleven of these individuals, and the SEC also charged two of them. Four

⁴⁹ See Deferred Prosecution Agreement, *U.S. v. Société Générale S.A.*, No. 18-CR-253 (E.D.N.Y. June 5, 2018); Press Release, Dep't of Justice, *Société Générale S.A. Agrees to Pay \$860 Million in Criminal Penalties for Bribing Gaddafi-Era Libyan Officials and Manipulating LIBOR Rate* (June 4, 2018), available [here](#); see also Paul, Weiss Client Memorandum, "Société Générale and Legg Mason to Pay Nearly \$650 Million to Resolve DOJ Investigation of Libyan Bribery Scheme" (June 7, 2018), available [here](#).

⁵⁰ See *In re Société Générale S.A.*, CFTC No. 18-14, 2018 WL 2761752 (June 4, 2018) (consent order) (benchmark manipulation).

⁵¹ See Commodity Futures Trading Commission, *Advisory on Self Reporting and Cooperation for CEA Violations Involving Foreign Corrupt Practices* (Mar. 6, 2019), available [here](#).

⁵² *Id.* Due to independent reporting obligations, futures professionals registered with the CFTC are ineligible for a resolution with no civil monetary penalty, but registrants that timely and voluntarily self-disclose, fully cooperate, and appropriately remediate will receive a recommended "substantial reduction in the civil monetary penalty." *Id.*

⁵³ See, e.g., Rod J. Rosenstein, Deputy Att'y Gen., Dep't of Justice, *Keynote Address on FCPA Enforcement Developments* (Mar. 7, 2019), available [here](#).

⁵⁴ See Information, *U.S. v. Lyon*, No. 19-CR-00008 (D. Haw. Jan. 16, 2019); Indictment, *U.S. v. Coburn*, No. 19-CR-120 (D.N.J. Feb. 14, 2019); Indictment, *U.S. v. Pinto-Franceschi*, No. 19-CR-135 (S.D. Tex. Feb. 21, 2019); Indictment, *U.S. v. Karimova*, No. 19-CR-165 (S.D.N.Y. Mar. 7, 2019); Indictment, *U.S. v. Cevallos Diaz*, No. 19-CR-20284-RS (S.D. Fla. May 9, 2019);

of these individual prosecutions were ancillary to corporate resolutions, with DOJ and SEC charges brought against two former executives in connection with an alleged bribery scheme involving Cognizant and, as discussed above, DOJ charges brought against an Uzbek executive in connection with the alleged MTS scheme and against a consultant in connection with the alleged TFMC scheme.⁵⁵

Charges also were unsealed against three individuals—Andrew Pearse, Surjan Singh, and Detelina Subeva—who were indicted in December 2018. All three individuals, investment bankers who reside in the United Kingdom, were charged with conspiracy to violate the FCPA in connection with allegations that they facilitated bribe payments to government officials in Mozambique and circumvented the internal accounting controls of a foreign investment bank that arranged two of the loans to the government officials.⁵⁶ In May 2019, Subeva pleaded guilty to money laundering conspiracy.⁵⁷ Pearse and Singh are contesting extradition to the United States from the United Kingdom.

Five individuals pleaded guilty to FCPA charges.⁵⁸ Among these were Jose Manuel Gonzalez Testino, who pleaded guilty to charges related to his role in an alleged scheme to pay bribes to officials of Petroleos de Venezuela S.A. (“PdVSA”), the Venezuelan state-owned energy company, and Jesus Ramon Veroes and Luis

Information, *U.S. v. Chacin Haddad*, No. 19-CR-20351 (S.D. Fla. June 11, 2019); Press Release, Dep’t of Justice, *Technipfmc PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019), available [here](#).

⁵⁵ See Indictment, *U.S. v. Coburn*, No. 19-CR-120 (D.N.J. Feb. 14, 2019); Indictment, *U.S. v. Karimova*, No. 19-CR-165 (S.D.N.Y. Mar. 7, 2019); Press Release, Dep’t of Justice, *Technipfmc PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019), available [here](#).

⁵⁶ See Indictment, *U.S. v. Boustani*, No. 18-CR-681 (E.D.N.Y. Dec. 19, 2018); Press Release, Dep’t of Justice, *Mozambique’s Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme That Victimized U.S. Investors* (Mar. 7, 2019), available [here](#).

⁵⁷ See Brendan Pierson, *Ex-Credit Suisse Banker Pleads Guilty to U.S. Charge Over Mozambique Loan*, REUTERS (May 20, 2019), available [here](#).

⁵⁸ See Press Release, Dep’t of Justice, *Micronesian Government Official Arrested in Money Laundering Scheme Involving Foreign Bribery* (Feb. 12, 2019), available [here](#); Press Release, Dep’t of Justice, *Business Executive Pleads Guilty to Foreign Bribery Charges in Connection With Venezuela Bribery Scheme* (May 29, 2019), available [here](#); Press Release, Dep’t of Justice, *Technipfmc PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019), available [here](#); Press Release, Dep’t of Justice, *Two Former Venezuelan Officials Charged and Two Businessmen Plead Guilty in Connection With Venezuela Bribery Scheme* (June 27, 2019), available [here](#).

Alberto Chacin Haddad, who pleaded guilty to charges related to corrupt payments made to foreign officials at Venezuela's state-owned electricity company, Corporación Eléctrica Nacional, S.A. ("Corpoelec").⁵⁹

Following a two-week jury trial in the District of Massachusetts, Roger Richard Boney and Joseph Baptiste were found guilty of conspiring to violate the FCPA.⁶⁰ According to evidence presented at trial, the defendants solicited bribes from undercover FBI agents posing as potential investors in connection with a proposed project to develop a port in Haiti, which was expected to cost approximately \$84 million. During a recorded meeting at a Boston-area hotel, the defendants told the undercover agents that, in order to secure Haitian government approval of the project, they would funnel bribes to Haitian officials through a Maryland-based non-profit entity that purported to help impoverished residents of Haiti.

Four individuals were sentenced in connection with FCPA convictions, with sentences ranging from time served to three years in prison.⁶¹

Looking forward, FCPA trials against five individuals are scheduled to commence in the second half of 2019.⁶²

Multi-Jurisdictional Coordination

As in prior years, senior officials in the Trump administration affirmed publicly their agencies' commitments to coordinating with foreign authorities, including in transnational bribery cases. For example, former Deputy Attorney General Rosenstein explained that "international cooperation is essential to prohibit corruption by multinational corporations."⁶³

⁵⁹ Press Release, Dep't of Justice, *Business Executive Pleads Guilty to Foreign Bribery Charges in Connection With Venezuela Bribery Scheme* (May 29, 2019), available [here](#); Press Release, Dep't of Justice, *Two Former Venezuelan Officials Charged and Two Businessmen Plead Guilty in Connection With Venezuela Bribery Scheme* (June 27, 2019), available [here](#).

⁶⁰ See Press Release, Dep't of Justice, *Two Businessmen Convicted of International Bribery Offenses* (June 20, 2019), available [here](#).

⁶¹ See Press Release, U.S. Attorney's Office, S.D.N.Y., *Patrick Ho, Former Head Of Organization Backed By Chinese Energy Conglomerate, Sentenced to 3 Years in Prison for International Bribery and Money Laundering Offenses* (Mar. 25, 2019), available [here](#); Press Release, Dep't of Justice, *U.S. Executive Sentenced to Prison for Role in Conspiracy to Violate Foreign Corrupt Practices Act* (May 14, 2019), available [here](#); Judgment in a Criminal Case, *U.S. v. Simon*, No. 16-CR-831-4 (S.D.N.Y. June 14, 2019); Judgment in a Criminal Case, *U.S. v. Wang*, No. 16-CR-495 (S.D.N.Y. June 26, 2019).

⁶² See *U.S. v. Chatburn Ripalda*, No. 18-CR-20312 (S.D. Fla. 2018); *U.S. v. Pinto-Franceschi*, No. 19-CR-135 (S.D. Tex. 2019); *U.S. v. Cevallos Diaz*, No. 19-CR-20284 (S.D. Fla. 2019).

⁶³ See Rod J. Rosenstein, Deputy Att'y Gen., Dep't of Justice, *Keynote Address on FCPA Enforcement Developments* (Mar. 7, 2019), available [here](#).

Consistent with this commitment, in the first half of the year, U.S. authorities coordinated with and leveraged the resources of their foreign counterparts, as demonstrated by the resolutions with MTS and TFMC.

International cooperation is also demonstrated by the continued worldwide investigation into the alleged misappropriation of more than \$4.5 billion in funds by senior government officials from 1Malaysia Development Berhad (“1MDB”), the state-owned strategic development company, and related allegations. Malaysian authorities filed criminal charges against Goldman Sachs, alleging that the bank made false statements to regulators in arranging \$6.5 billion of bond sales for 1MDB.⁶⁴ Malaysian authorities also fined Deloitte \$535,000 for failure to discharge its statutory obligations despite discovering irregularities when auditing a \$583 million program issued by a unit of 1MDB.⁶⁵ In addition, Malaysia agreed to extradite to the United States a former Goldman Sachs banker who, in 2018, was charged by the DOJ with FCPA violations in connection with the 1MDB investigation.⁶⁶ The banker faces separate criminal charges in Malaysia.

U.S. coordination with certain other foreign counterparts—such as China—was noticeably absent.⁶⁷

Foreign Jurisdictions’ Anti-Corruption Enforcement Activity

Significant foreign anti-corruption enforcement activity occurred abroad in the first half of 2019. Noteworthy examples are provided below.

⁶⁴ See Anisah Shukry, *Malaysia Could Drop Goldman’s 1MDB Charges for \$7.5 Billion*, BLOOMBERG (Jan. 18, 2019), available [here](#).

⁶⁵ See Yantoultra Ngui & Samuel Rubinfeld, *Malaysia’s Securities Commission Fines Deloitte Over Breaches Tied to 1MDB*, WALL ST. J. (Jan. 31, 2019), available [here](#).

⁶⁶ See Suzanne Barlyn, *U.S. Starts Giving Documents to Lawyers of Ex-Goldman Banker Ng in 1MDB Case*, REUTERS (May 23, 2019), available [here](#); Anisah Shukry, *Ex-Goldman Banker to Be Extradited to U.S. for 1MDB Charges*, BLOOMBERG (Feb. 14, 2019), available [here](#).

⁶⁷ For instance, a federal judge in Washington D.C. found three Chinese banks—including state-owned Bank of Communications—in contempt for refusing to comply with subpoenas in connection with a federal investigation of North Korean sanctions violations. In addressing these sanctions, Chinese Foreign Ministry spokesperson Geng Shuang stated that China “always oppose[s] the so-called long-arm jurisdiction over Chinese businesses by the U.S.” See Geng Shuang, Spokesperson, Chinese Foreign Ministry, *Regular Press Conference* (June 25, 2019), available [here](#).

Asia

In **China**, the former chief of Interpol, Meng Hongwei, pleaded guilty to receiving more than \$2 million worth of bribes in exchange for favors.⁶⁸ Wang Xiaoguang, a former provincial vice-governor in southern China, pleaded guilty and was sentenced to twenty years in jail and fined a record \$26 million for bribery, embezzlement, and insider trading.⁶⁹

Europe and the Middle East

The highest court in **France** ordered that former President Nicolas Sarkozy must stand trial on corruption charges. President Sarkozy is accused of attempted bribery for offering a promotion to a French judge in exchange for information about a criminal inquiry into his presidential campaign financing.⁷⁰ The judge and President Sarkozy's lawyer also face trial on related charges.

Also in France, Lamine Diack, the president of the International Association of Athletics Federations from 1999 to 2015, was ordered to stand trial on charges of corruption and money laundering allegedly carried out during his presidency.⁷¹ Diack's trial follows a four-year investigation into doping cover-ups, extortion, and bribery in world athletics, including an alleged conspiracy to conceal positive drug tests by Russian athletes. Separately, Tsunekazu Takeda, the president of Japan's Olympic Committee and chairman of the International Olympic Committee's marketing commission, was indicted in France on corruption charges related to Tokyo's bid to host the 2020 Summer Olympics.⁷²

In **Italy**, Parliament approved a so-called "bribe destroyer" (spazzacorotti) bill aimed at combating corruption in Italy's public sector.⁷³ The bill eases the statute of limitations for corruption cases, prohibits certain individuals convicted of corruption from holding public office or seeking state contracts, imposes

⁶⁸ See Philip Wen, *Former Interpol Chief Admits to Taking Bribes, Chinese Court Says*, WALL ST. J. (June 20, 2019), available [here](#).

⁶⁹ See William Zheng, *China Ex-Official Who Collected Rare Orchids and Mao-tai Liquor Jailed for 20 Years for Corruption*, S. CHINA MORNING POST (Apr. 23, 2019), available [here](#).

⁷⁰ See Emmanuel Jarry & Richard Lough, *France's Sarkozy Loses Bid to Avoid Corruption Trial*, REUTERS (June 19, 2019), available [here](#).

⁷¹ See Sean Ingle, *Lamine Diack to Stand Trial for Money Laundering and Corruption*, GUARDIAN (June 24, 2019), available [here](#).

⁷² See Ben Dooley, *Japan's Olympic Chief to Step Down Amid Corruption Investigation*, N.Y. TIMES (Mar. 19, 2019), available [here](#); Tariq Panja & Hiroko Tabuchi, *Japan's Olympics Chief Faces Corruption Charges in France*, N.Y. TIMES (Jan. 11, 2019), available [here](#).

⁷³ See *Italy: New Anti-Corruption Legislation Comes Into Force*, GLOBAL LEGAL MONITOR: LIBRARY OF CONGRESS (Feb. 26, 2019), available [here](#).

harsher penalties in bribery cases involving public officials, increases the penalties for embezzlement, and expands the definition of a foreign public official.

Royal Dutch Shell is currently standing trial in Italy on bribery charges relating to a \$1.3 billion oil deal in Nigeria.⁷⁴ The Dutch Public Prosecutor's Office has announced plans to prosecute Shell for corruption charges related to the same allegations.

In **Israel**, following over two years of investigations and three separate corruption probes, Israel's Attorney General announced plans to indict Prime Minister Benjamin Netanyahu for bribery, fraud and breach of trust in connection with three sets of allegations.⁷⁵ First, Prime Minister Netanyahu allegedly granted Bezeq, an Israeli telecommunications company, regulatory benefits in exchange for favorable media coverage of himself and his wife. Second, he allegedly received hundreds of thousands of dollars in gifts in exchange for favors, including lobbying U.S. officials for a visa. Third, Prime Minister Netanyahu allegedly attempted to curtail the circulation of a leading Israeli daily newspaper in exchange for favorable coverage from a rival paper.⁷⁶

Laura Codruta Kovesi, the former chief of Romania's anticorruption agency, was indicted in **Romania** on bribery, abuse of office, and false testimony charges.⁷⁷ Kovesi is one of two candidates being considered to lead the European Public Prosecutor's Office, a new agency with a mandate to investigate and prosecute large-scale and cross-border crimes related to the European Union's budget, when it launches next year.⁷⁸ The European Commission issued a statement calling for the Romanian government, which has strongly opposed Kovesi's candidacy, to treat her fairly.⁷⁹

In **Ukraine**, President Petro Poroshenko announced the launch of a special court to try corruption cases, along with the appointment of thirty-eight new judges to that court.⁸⁰ Ukraine established the court as part

⁷⁴ See Stanley Reed, *Shell May Face Charges in Netherlands Tied to Nigerian Oil Deal*, N.Y. TIMES (Mar. 1, 2019), available [here](#).

⁷⁵ See Felicia Schwartz, *Israel Attorney General to Charge Prime Minister Netanyahu With Bribery, Fraud*, WALL ST. J. (Mar. 1, 2019), available [here](#).

⁷⁶ See David M. Halbfinger, *The Cases Against Netanyahu and a Decision to Indict*, N.Y. TIMES (Feb. 28, 2019), available [here](#).

⁷⁷ See Luiza Ilie & Jan Strupczewski, *Romania Files Charges Against Former Chief Anti-Corruption Prosecutor*, REUTERS (Mar. 29, 2019), available [here](#).

⁷⁸ See Kit Gillet, *Leading Prosecutor for E.U. Anticorruption Job Is Barred From Leaving Romania*, N.Y. TIMES (Mar. 29, 2019), available [here](#).

⁷⁹ See Valerie Hopkins & Michael Peel, *EU Warns Romania Over Clampdown on Former Anti-Corruption Chief*, FIN. TIMES (Mar. 29, 2019), available [here](#).

⁸⁰ See Andrei Makhovsky, *Ukraine President Rolls Out Special Court to Try Corruption Cases*, REUTERS (Apr. 11, 2019), available [here](#).

of a \$3.9 billion loan program with the International Monetary Fund aimed at prosecuting corruption and insulating court decisions from political pressure or bribery.

In the **United Kingdom**, the Serious Fraud Office (“SFO”), under the leadership of its new director Lisa Osofsky, fined F.H. Bertling Ltd. \$1.1 million for alleged bribe payments made in Angola to secure shipping contracts worth \$20 million.⁸¹ The SFO’s investigation also resulted in the convictions of six senior F.H. Bertling executives.

The SFO announced that, as part of an ongoing investigation into corruption at Petrofac, a UK-listed oil services company, David Lufkin, a former Petrofac executive, pleaded guilty to eleven counts of bribery related to payments Petrofac made to win contracts in Iraq and Saudi Arabia worth more than \$4 billion.⁸²

In addition, presumably as part of a housekeeping and prioritization exercise, the SFO closed two long-running corruption investigations without bringing prosecutions.⁸³ First, the SFO concluded an investigation of GlaxoSmithKline PLC, which began in 2014, following accusations by Chinese authorities that the company had bribed hospitals and officials in China to purchase its medicines. Second, the SFO closed its investigation of Rolls-Royce PLC, which began in 2013, into allegations that the company falsified accounts to hide the illegal use of local middlemen and paid tens of millions of pounds in bribes to win engine and other deals in China, Indonesia, Russia, and Thailand.

North America

In **Canada**, a Quebec court ruled that there is sufficient evidence against SNC-Lavalin, Canada’s largest engineering and construction company, to stand trial on fraud and bribery charges.⁸⁴ Canadian prosecutors allege that SNC-Lavalin paid approximately \$48 million in bribes to Libyan officials between 2001 and 2011, in violation of Canada’s Corruption of Foreign Public Officials Act. SNC-Lavalin was at the center of a political scandal following reports that Prime Minister Justin Trudeau and his aides used “political interference” and “veiled threats” to try to pressure then-Attorney General Jody Wilson-Raybould to settle the case against SNC-Lavalin under Canada’s new regime providing for deferred prosecution agreements.⁸⁵

⁸¹ See Press Release, Serious Fraud Office, *FH Bertling Sentenced for \$20m Angolan Bribery Scheme* (June 3, 2019), available [here](#); Kristin Broughton, *F.H. Bertling Fined \$1 Million in Angola Bribery Case*, WALL ST. J. (June 3, 2019), available [here](#).

⁸² See Barney Thompson & Anjali Ravalin, *Former Petrofac Executive Pleads Guilty to Bribery*, FIN. TIMES (Feb. 7, 2019), available [here](#).

⁸³ See Barney Thompson, *SFO Ends Investigations Into Rolls-Royce and GSK*, FINANCIAL TIMES (Feb. 22, 2019), available [here](#).

⁸⁴ See Jonathan Montpetit, *SNC-Lavalin to Stand Trial on Corruption Charges, Quebec Judge Rules*, CANADIAN BROADCASTING CORP. (May 29, 2019), available [here](#).

⁸⁵ See Alan Yuhas, *How Justin Trudeau Was Ensnared by Scandal: A Corruption Case and ‘Veiled Threats,’* N.Y. TIMES (Mar. 4, 2019), available [here](#).

Ultimately, Kathleen Roussel, Canada’s director of prosecutions, determined not to offer SNC-Lavalin a deferred prosecution agreement, citing the “nature and gravity” of the company’s alleged corruption in Libya.⁸⁶

Authorities in **Mexico** indicted Emilio Lozoya Austin, the former head of Petróleos Mexicanos (“Pemex”), the state-run oil company, for bribery, tax fraud, and conducting operations using money from illegal sources.⁸⁷ Lozoya’s indictment is the first major anticorruption prosecution under the administration of Mexico’s President Andrés Manuel López Obrador. Prosecutors allege that Lozoya used Pemex to purchase a dysfunctional fertilizer plant for \$475 million, with related, suspicious money transfers made to a shell company implicated in the investigations relating to Odebrecht S.A., the Brazilian construction conglomerate. The SEC is investigating former President Enrique Peña Nieto’s possible role in facilitating these transactions.⁸⁸

South America

Officials and business leaders in Latin America continue to be implicated in the fallout from the investigations into alleged corruption in the construction and oil industries.

In **Brazil**, the Supreme Court ruled in March 2019 that corruption cases involving illegal campaign donations should be handled by electoral courts rather than criminal courts.⁸⁹ Many of the convictions resulting from Operation Lava Jato—the sweeping investigation of money laundering and corruption associated with Petrobras—have involved illegal campaign donations, and Brazilian prosecutors have warned that the court’s ruling could undermine their ability to hold politicians accountable in similar corruption cases.

⁸⁶ See Jim Bronskill, *Prosecutor Cited ‘Gravity’ of Alleged SNC-Lavalin Offences: Court Documents*, CANADIAN BROADCASTING CORP. (Apr. 5, 2019), available [here](#).

⁸⁷ See Kirk Semple & Azam Ahmed, *Mexico Charges Former Oil Official With Bribery in Anticorruption Drive*, N.Y. TIMES (May 28, 2019), available [here](#).

⁸⁸ See Diego Ore, *Lawyer for Ex-Pemex Boss Wants Pena Nieto to Testify in Graft Probe*, REUTERS (May 29, 2019), available [here](#); Noé Cruz Serrano, *U.S. Authorities Are Investigating Former President Peña Nieto for Bribery*, EL UNIVERSAL (June 18, 2019), available [here](#).

⁸⁹ See Brad Brooks, *Brazil Supreme Court Decision Seen as ‘Blow’ to Car Wash Probe*, REUTERS (Mar. 14, 2019), available [here](#).

Brazilian authorities arrested former President Michael Temer in connection with bribery allegations related to Operation Lava Jato.⁹⁰ President Temer was not charged with a crime upon his arrest and remains under investigation.

Additionally, a series of leaked private messages among law enforcement officials in Brazil called into question the integrity of prosecutions relating to Operation Lava Jato.⁹¹ The messages suggest that Judge Sérgio Moro, now serving as that country's justice minister, consulted with and advised federal prosecutors on strategy during various investigations and trials. Judge Moro presided over the trial in which former President Luiz Inácio Lula da Silva was convicted of corruption and money laundering charges, and President da Silva's legal team announced that it will seek to overturn his conviction.

The Board of Braskem S.A., a Brazilian petrochemical company, entered into a leniency agreement with authorities in Brazil as part of its role in the Operation Lava Jato case.⁹² Under the agreement, Braskem will pay approximately \$101 million to settle allegations of political kickbacks and bribes involving contracts with Petrobras. These allegations arise from the same facts that were the subject of a global settlement reached in 2016 with the DOJ, the SEC, and the Swiss Office of the Attorney General.

In **Peru**, authorities arrested former President Pedro Pablo Kuczynski for allegedly helping Odebrecht win contracts in exchange for bribes disguised as consulting fees, while he was a cabinet minister.⁹³ Former President Alan García committed suicide to avoid arrest in connection with a different Odebrecht investigation, involving charges of money laundering, influence peddling, and collusion.⁹⁴ Former President Alejandro Toledo was arrested in the United States and faces extradition to Peru for allegedly receiving \$20 million from Odebrecht in exchange for helping the company to secure public works contracts in Peru.⁹⁵

⁹⁰ See Ernesto Londoño & Leticia Casado, *Former President Michel Temer of Brazil Is Arrested in Bribery Probe*, N.Y. TIMES (Mar. 21, 2019), available [here](#).

⁹¹ See Ernesto Londoño & Leticia Casado, *Leaked Messages Raise Fairness Questions in Brazil Corruption Inquiry*, N.Y. TIMES (June 10, 2019), available [here](#).

⁹² See Aluísio Alves, *Braskem Board Approves Leniency Deal With Brazil's Authorities*, REUTERS (May 27, 2019), available [here](#).

⁹³ See Mitra Taj & Guadalupe Pardo, *Peruvian Judge Orders Arrest of Ex-President Kuczynski in Bribery Probe*, REUTERS (Apr. 10, 2019), available [here](#); Marco Aquino, *Peru Ex-President Kuczynski Ordered Into Pre-Trial House Arrest*, REUTERS (Apr. 28, 2019), available [here](#).

⁹⁴ See Andrea Zarate & Nicholas Casey, *Alan García, Ex-President of Peru, Is Dead After Shooting Himself During Arrest*, N.Y. TIMES (Apr. 17, 2019), available [here](#).

⁹⁵ See Marco Aquino & Maria Cervantes, *Peru's 'Fugitive' Ex-President Toledo Arrested in U.S., Faces Extradition*, REUTERS (July 16, 2019), available [here](#).

Multilateral Development Bank Debarments

In the first half of the year, as in prior periods, the World Bank Group continued to debar considerably more individuals and entities than did the other multilateral development banks (“MDBs”). The World Bank Group imposed 881 debarments, whereas the African Development Bank imposed seven, the Inter-American Development Bank imposed three, and the Asian Development Bank and the European Bank for Reconstruction and Development imposed none.⁹⁶ Eleven of the debarments imposed by the World Bank and three of the debarments imposed by the African Development Bank were based, in part or in whole, on corrupt practices. The other MDBs do not appear to have imposed any debarments based on corrupt practices.

Conclusion

In 2019, as in past years, U.S. authorities have continued to focus on individual accountability, providing companies with incentives for self-disclosure and cooperation, corporate compliance, multi-jurisdictional coordination, and international cooperation. Although it is early in his current tenure as U.S. Attorney General, it does not appear as if Attorney General Barr has implemented any material changes to the DOJ’s priorities in this area.

We look forward to providing you with further updates on these and other developments.

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⁹⁶ Debarments were counted based on the data reported by each MDB, using each bank’s own reporting criteria. See Debarment and Sanctions Procedures, AFRICAN DEV. BANK GRP., [available here](#); Published List, ASIAN DEV. BANK, [available here](#); Ineligible Entities, EUROPEAN BANK FOR RECONSTR. & DEV., [available here](#) (including debarments based upon third-party findings); Sanctioned Firms and Individuals, INTER-AMERICAN DEV. BANK, [available here](#); World Bank Listing of Ineligible Firms & Individuals, WORLD BANK, [available here](#). The World Bank Group appears to report only current debarments; the debarment totals are based upon the data reported as of June 30, 2019. The African Development Bank does not specify the grounds for its debarments; those grounds were counted based upon information reported by the Asian Development Bank and African Development Bank press releases.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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