

**Baker
McKenzie.**

**Anti-bribery and corruption and
economic crime**

ANNUAL COMPLIANCE CONFERENCE

Annual Compliance Conference 2023

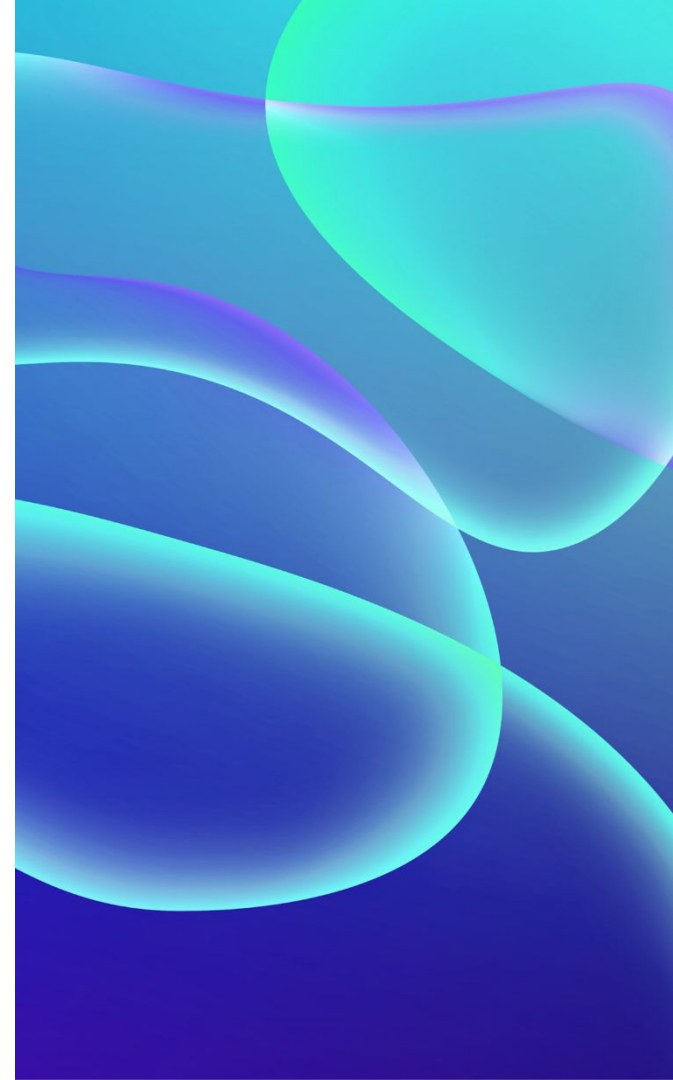
01 Anti-bribery and corruption and economic crime
5 - 7 September

02 Customs and key compliance developments
12 - 14 September

03 ESG, supply chain and product compliance
19 - 21 September

04 Sanctions and export controls
26 - 28 September

05 Antitrust compliance
3 - 5 October



**Baker
McKenzie.**

Latest anti-bribery and corruption developments in the UK and US

Monday 2 October 2023

ANNUAL COMPLIANCE CONFERENCE

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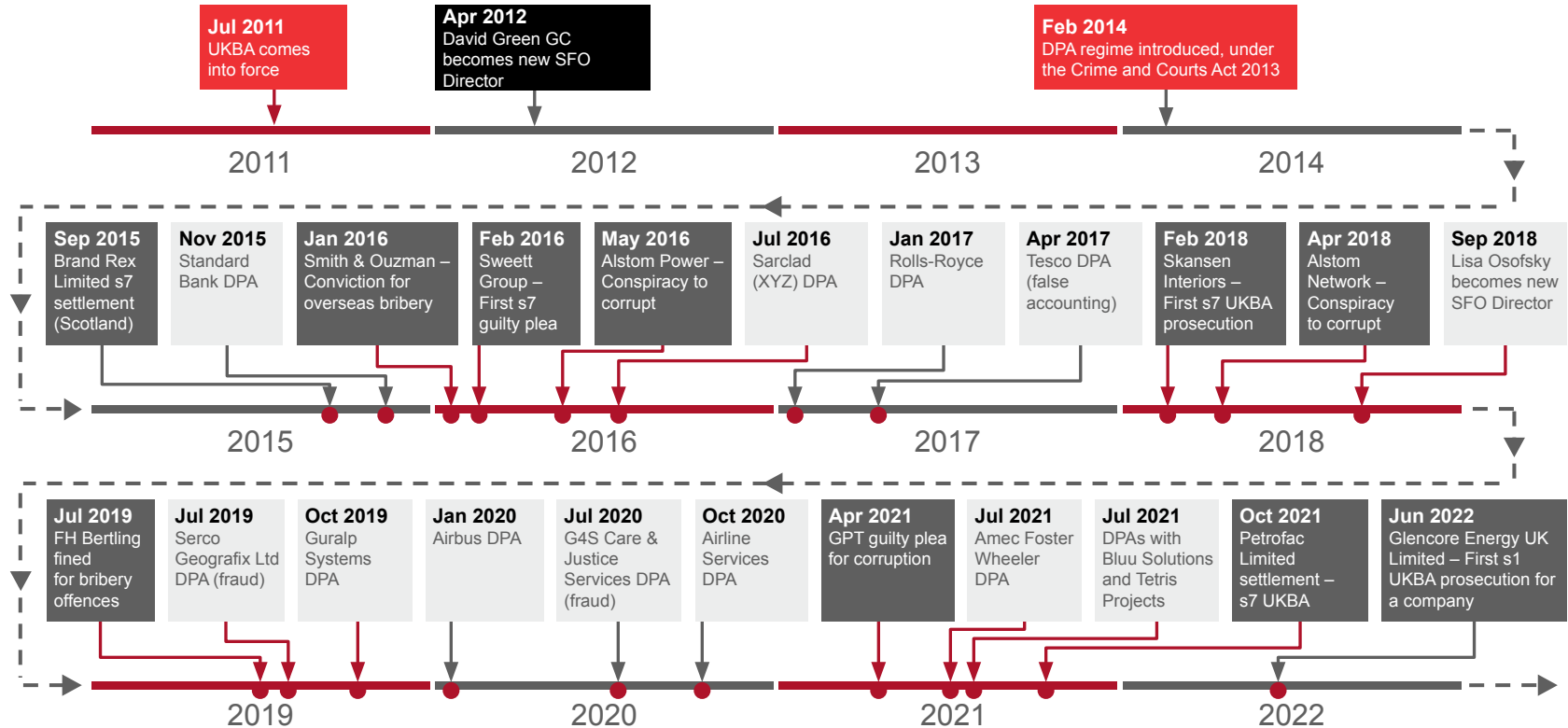


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0 UK Developments
1

UKBA Enforcement: Looking Back



SFO Enforcement: Corporates

Glencore

In November 2022, Glencore were sentenced to pay the SFO £280 million, the largest corporate sentence imposed in the UK to date, for its conviction for bribery offences.

Ultra Electronics

In June 2023, the SFO announced that it had widened its investigation into suspected corruption following a self-report by the company.

G4S

The SFO closed its £38.5 million DPA with G4S after three years. The SFO said that G4S had fully cooperated, following its implementation of a compliance overhaul.

Petrobras

In March 2023, the SFO seized \$7.7 million in assets from a former Petrobras executive following allegations of corruption, the SFO's largest ever confiscation order. The individual is appealing the order, with an appeal date set for February 2024.

Bluu Solutions / Tetris Projects

In March 2023, the SFO announced that these two companies had entered a DPA in July 2021. It also secured its first conviction of an individual for offences relating to a DPA.

SFO: Case Closures

Rio Tinto

On 24 August 2023, the SFO announced it was dropping its investigation into Rio Tinto because "it is not in the public interest to proceed with a prosecution in the UK." The investigation had been ongoing since 2017, following a self-report by the company to the US, UK and Australian authorities.



ENRC

Also on 24 August 2023, the SFO announced it had dropped its 10-year corruption investigation into ENRC because of "insufficient admissible evidence to proceed."

Alpha / Green Park

On the same date, the SFO announced it had closed its investigation into these companies for suspected fraud due to "insufficient admissible evidence to proceed."

SFO Enforcement: Individuals

GPT

A re-trial of a former GPT executive and a contractor for international corruption charges has been delayed again and is now due to take place in October 2023.

G4S

In March 2023, the SFO dropped its case against three former executives of G4S due to significant disclosure failings and multiple delays.

Bluu Solutions

Three former executives were acquitted by a jury of bribery charges in January 2023. A fourth individual at a related company had previously pleaded guilty to bribery.

Glencore

The SFO are investigating eleven former employees of Glencore for potential bribery offences, with an update due by the end of 2023.

London Mining PLC

In June 2023, the SFO charged the CEO, CFO and a consultant with conspiring to make multiple corrupt payments to secure preferential treatment in Sierra Leone.

SFO: Improvements?



In May 2023, the SFO reported that it had made **significant progress** in implementing the recommendations from the **Altman** and **Calvert-Smith** reviews. It received similar praise for its improvement in an HMCPSI report released the same month.

The SFO's **Annual Report** for 2022-23 celebrated its achievements of:

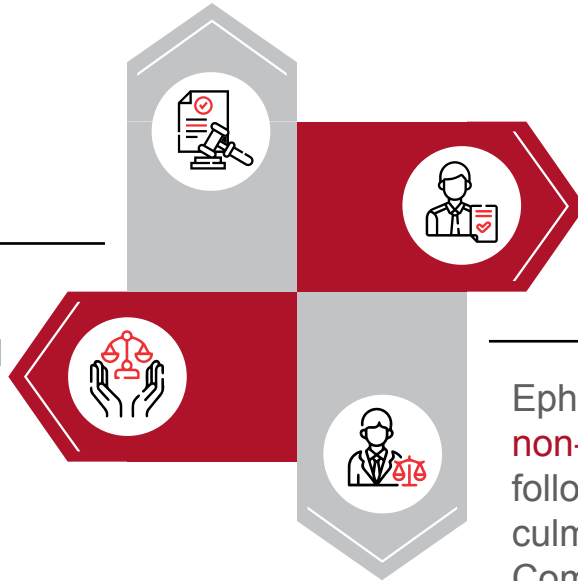


- **First conviction** of an individual for offences subject to a DPA;
- **£95.5 million+** recovered in connection to crimes investigated by the SFO and partner agencies;
- The largest corporate sentence imposed in the UK to date of **£280 million**; and
- Conviction of **8 business executives**, resulting in 61.5 cumulative years in prison.

SFO: Looking Forwards

The SFO's annual report stated that it currently has **35 criminal cases** open and **9 trials** at court.

The SFO may also find itself responsible for new offences and new powers under the **Economic Crime Bill...**



On 25 September 2023, **Nick Ephgrave** became the new SFO director, replacing Lisa Osofsky.

Ephgrave is the **first non-lawyer to lead the SFO**, following a career in policing, which culminated in his role as Assistant Commissioner for the Metropolitan Police Service between 2019 and 2022.

Economic Crime Bill



The new Economic Crime Bill continues to make its way through Parliament – it **will be read** again by the House of Lords on **18 October 2023**.



The Bill is expected to introduce a **new offence of failure to prevent fraud**. However, the Commons and House of Lords have now **agreed to remove** the prospect of a corresponding **failure to prevent money laundering offence**.



An organisation could receive an **unlimited fine** if convicted of this new offence.



It is also expected that the identification doctrine (“*directing mind and will*”) will be put onto a statutory footing and will now specifically include **senior managers**.

Economic Crime Bill – Open Points



Disagreement over **cost protections for law enforcement** in civil recovery cases, with the Commons asserting that there should not be a departure from the 'loser pays' principle



The House of Lords agreed to apply an exemption from the failure to prevent fraud offence to micro-entities only, but **the Commons is pushing for a general SME exemption.**



0 **US Developments**
2

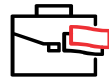
US FCPA Enforcement Statistics (September 2022 - Present)

**The Takeaway:
both the SEC and
DOJ continue to
enforce FCPA
violations**



DOJ:

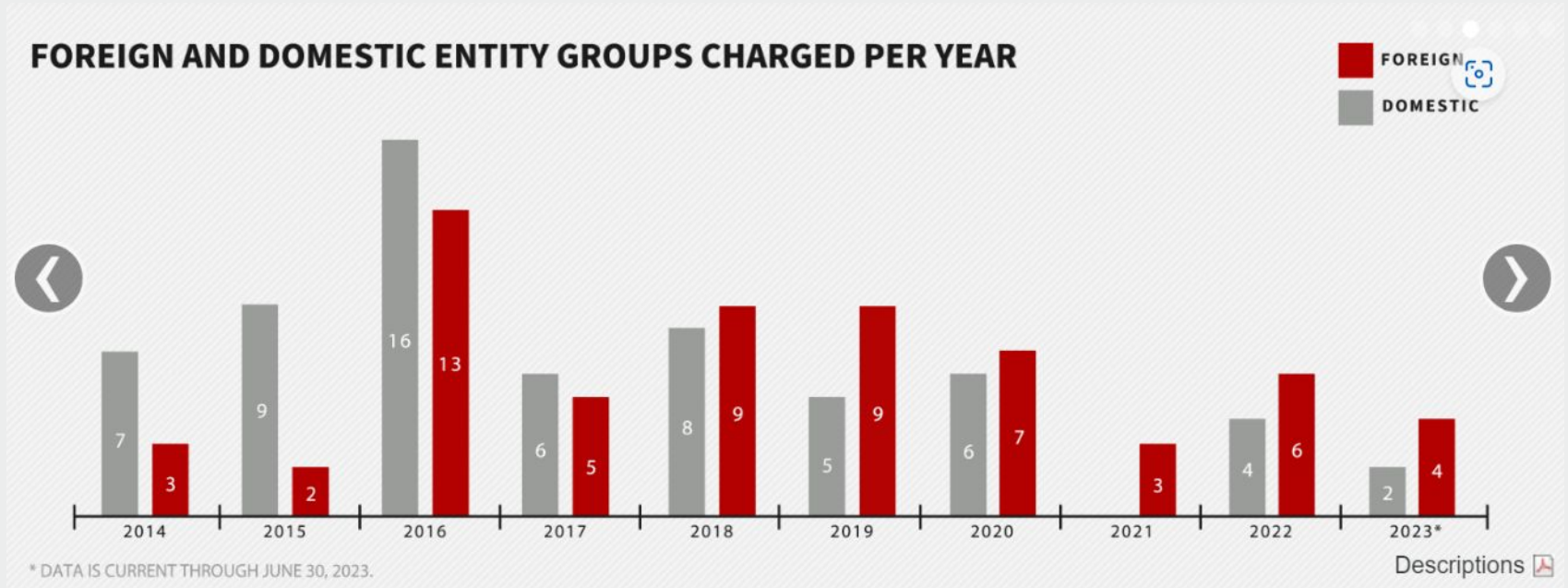
- 8 corporate resolutions
- 2 declinations with disgorgement
- 10 individual cases (unsealed, filed, guilty plea, trial convictions)



SEC:

13 corporate resolutions

Corporate FCPA Cases: Timeline



SEC FCPA Enforcement in the Last Year

September 15, 2022

GOL Intelligent Airlines Inc.

- Bribery scheme orchestrated by a senior executive
- Anti-bribery, books and records, internal accounting controls, and other related charges
- More than \$160 million to the SEC, DOJ, and Brazilian authorities

September 27, 2022

Oracle Corporation

- Subsidiaries bribed government officials in Turkey, UAE, and India in exchange for business with state-owned entities
- Anti-bribery, books and records, and internal accounting controls violations
- \$23 million settlement

December 3, 2022

ABB

- Bribery scheme in South Africa in which ABB execs. allegedly colluded with a high-ranking government official to funnel bribes to the official through third party service providers
- Anti-bribery, books and records, and internal accounting controls violations
- More than \$147 million settlement

December 19, 2022

Honeywell International Inc.

- At least \$4 million in bribes offered to a high-ranking Brazilian government official in connection with the bidding process at Petrobras, Brazil's state-owned oil company
- Employees and agents of Belgian subsidiary paid more than \$75,000 in bribes to an Algerian government official to obtain business with a SOE
- Anti-bribery, books and records, and international accounting controls violations
- \$81 million settlement

May 11, 2023

Koninklijke Philips N.V.

- Employees at Chinese subsidiaries, distributors, and sub-dealers used price discounts that increased the risk of payments to government officials in order to increase likelihood that Philips' products would be selected in public tenders.
- Books and records and internal accounting controls violations
- \$62 million settlement

April 26, 2023

Frank's International N.V.

- Payments by subsidiaries to an Angolan government official through a purported sales agent
- Anti-bribery, books and records, and internal accounting controls violations
- \$8 million settlement

March 6, 2023

Flutter Entertainment plc, as successor-in-interest to The Stars Group, Inc.

- Payments to consultants in Russia in support of company's operations and efforts to have poker legalized in that country
- Books and records and internal accounting control violations
- \$4 million civil penalty

Rio Tinto plc

- Payment to a consultant to help retain mining rights to certain blocks in the Simandou mountain region in Guinea by offering or paying money to benefit a Guinean government official
- Books and records and internal accounting control violations
- \$15 million civil penalty

May 26, 2023

Gartner, Inc.

- Corrupt arrangement with a South African consulting firm to win contracts from the South African Revenue Service
- Anti-bribery, books and records, and internal accounting controls violations
- More than \$2.45 million settlement

August 10, 2023

Colombian Conglomerate Grupo Aval and Its Bank Subsidiary Corficolombiana

- Corficolombiana, through former president and a JV partner, bribed government officials in Colombia to win an extension to an infrastructure contract
- Accounting provisions and anti-bribery violations
- \$40 million settlement

August 25, 2023

3M

- Overseas travel for Chinese officials
- Books and records and internal controls violations
- \$6.5 million settlement

September 28, 2023

Clear Channel Outdoor

- Bribes to Chinese officials to obtain advertising contracts
- Anti-bribery, recordkeeping, and internal accounting controls violations
- \$26 million settlement

September 29, 2023

Albermale Corp

- Bribes through agents in Vietnam, India, and Indonesia
- Anti-bribery, recordkeeping, and internal accounting controls violations
- \$103 million settlement

DOJ Corporate Enforcement in the Last Year

Filed: September 9, 2022
Unsealed: September 15, 2022

GOL Linhas Aéreas Inteligentes S.A.

Deferred Prosecution Agreement (with criminal penalty of \$17 million)

Filed: December 2, 2022

ABB Ltd.

Deferred Prosecution Agreement (ABB's total criminal penalty is \$315 million)

Filed: December 2, 2022

ABB Management Services

Guilty Plea (conspiracy to violate the anti-bribery provisions)

Filed: March 8, 2023

Corsa Coal Corporation

Declination with Disgorgement \$1,200,000

Filed: December 21, 2022

Safran S.A.

Declination with Disgorgement \$17,160,000

Filed: December 19, 2022

UOP LLC d/b/a HONEYWELL UOP

Deferred Prosecution Agreement (with criminal penalty of \$79 million)

Filed: December 2, 2022

ABB South Africa (Pty) Ltd.

Guilty Plea (conspiracy to violate the anti-bribery provisions)

Filed: March 20, 2023

Telefonaktiebolaget LM Ericsson

Guilty Plea (conspiracy to violate the anti-bribery provisions and internal controls and books and records provisions; criminal penalty more than \$206 million)

Filed: August 10, 2023

Corporacion Financiera Colombiana SA

Deferred Prosecution Agreement (with criminal penalty of \$40.6 million)

Announced: September 29, 2023

Albemarle Corp

Non-Prosecution Agreement (\$218 million resolution with both DOJ and SEC)

DOJ Individual Prosecutions in the Last Year

Unsealed: November 3, 2022

United States v. Asante Kwaku Berko
(Indictment with FCPA allegations related to Ghana)

Trial Conviction:
December 13, 2022

United States v. Adrian Jose Velasquez Figueroa
(convicted of money laundering offenses relating to bribery in Venezuela)

Trial Conviction:
December 13, 2022

United States v. Claudia Patricia Diaz
(convicted of money laundering offenses relating to bribery in Venezuela)

Unsealed: February 17, 2023

United States v. Glenn Oztemel and Eduardo Innecco
(charged with conspiracy, multiple counts of violating FCPA, and money laundering in connection with bribes to officials to win contracts with Petrobras)

Fifth Circuit Decision Reversing Dismissal: February 28, 2023

United States v. Daisy T. Rafoi-Bleuler
(Fifth Circuit reversed and remanded the decision by the lower court to dismiss all counts)

Fifth Circuit Decision Reversing Dismissal: February 28, 2023

United States v. Paulo J.D.C Casqueiro-Murta
(Fifth Circuit reversed and remanded the decision by the lower court to dismiss all counts)

Date of Plea: March 28, 2023

United States v. Samuel Bankman-Fried
(Superseding Indictment with FCPA allegations related to China)

Date of Plea: March 29, 2023

United States v. Alvaro Ledo Nass
(pled guilty and convicted of conspiracy to commit money laundering and certain offenses relating to bribery in Venezuela)

Filed: August 3, 2023

United States v. Javier Aguilar
(Indictment with FCPA allegations related to Ecuador)

Filed: September 20, 2023

United States V. Amadau Kane Diallo
(Superseding Indictment with allegations related to wire fraud and money laundering)

Key Corruption and Enforcement Trends 2023



Increased cooperation between enforcement agencies of different countries/more efficient ways of sharing relevant information (coordinated investigations and prosecutions with the UK, Brazil, Malaysia, Switzerland, Ecuador, France, the Netherlands, Singapore, and first collaboration with South Africa in the ABB resolution)



New and updated guidance from DOJ:

- Updated Corporate Enforcement Policy ("CEP")
- Updated Guidance on Evaluation of Corporate Compliance Programs
- New Compensation Incentives and Clawbacks Pilot Program

Updated DOJ Corporate Enforcement Policy

January 2023, DOJ CEP update:

1

A new path to **declination** is available for companies (even when aggravating circumstances are present) that:

- "Immediately" and voluntarily self-disclosed the misconduct;
- Had an effective compliance program and internal controls at the time of the misconduct, which identified the misconduct;
- Provided "extraordinary" cooperation and undertook "extraordinary" remediation.

2

Companies that disclose, cooperate, and remediate will not be required to enter a guilty plea (i.e., the matter will be resolved via a non-prosecution agreement or deferred prosecution agreement)

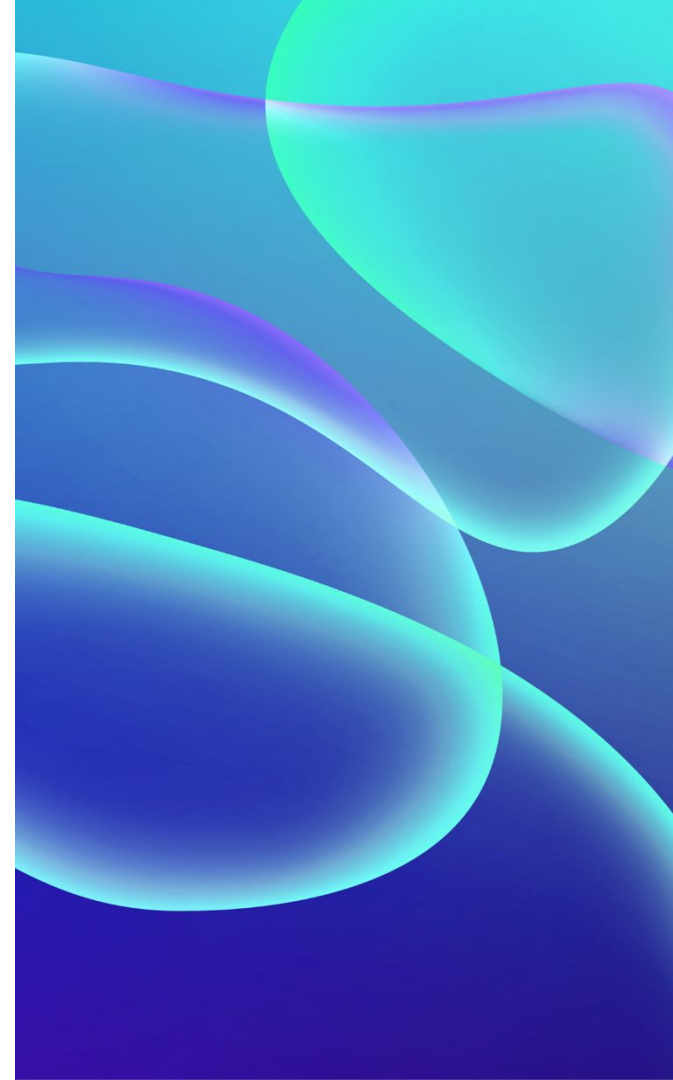
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Higher potential discounts on criminal penalties:

- The CEP provides for "at least 50% and up to 75% reduction off of the low end" of the USSG fine range for companies that voluntarily self-disclose, fully cooperate, and appropriately remediate, except in the case of recidivists.

Ephemeral Messaging

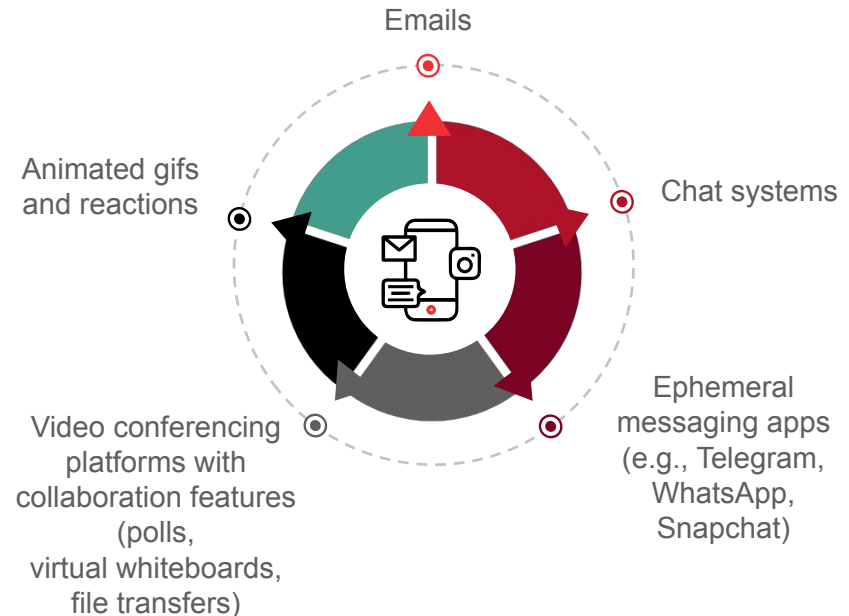
- Significant impact on investigations and data retention:
 - WhatsApp message and Text message reviews becoming just as common (and in some instances, more important) as email reviews
 - Increased usage of mobile phones to do company business requires companies to reconsider their data retention policies – ephemeral messaging raises the question on how to retain data that can disappear after set periods of time
 - Ephemeral messaging makes it more difficult to identify misconduct
- SEC recently charged 16 financial firms for alleged "failures by the firms and their employees to maintain and preserve electronic communications", namely text messaging apps on their personal devices. The combined fine was \$1.1 billion.
- In the GOL FCPA resolutions, the DOJ and SEC alleged that co-conspirators of the Brazilian airline used an ephemeral US-based messaging app in furtherance of the bribery scheme.



Ephemeral (non-platform) Messaging

- New extensive direction regarding communication platforms and channels, instructing prosecutors to assess how a company has informed its employees of its communication-platform-related policies and procedures, and whether the company has enforced the policies and procedures regularly and consistently in practice
- In evaluating corporate communication-platform policies, **prosecutors will assess**:
 1. **Types of communication** channels company personnel use
 2. The **policies and procedures governing** the use of communication platforms and channels
 3. The **company's risk management measures**, such as the consequences for employees who refuse the company access to company communications, the impact of the use of ephemeral messaging applications on the company's evaluation of employees' compliance with company policies and procedures, and related disciplinary actions

Prevalence of Private and Ephemeral Communications, Particularly Outside US



DOJ's Compensation & Clawbacks Pilot Program

Announced March 2, 2023; effective March 15, 2023



Policy goal:

Shift the burden of corporate financial penalties away from shareholders onto those more directly responsible (i.e., the employees engaged in criminal conduct). Other DOJ policy also requires prosecutors to consider prosecution of individual employees alongside corporate defendants.



Impact:

- Companies are required to implement compliance-related criteria in their compensation and bonus system and to report to the Division about such implementation in the event of a criminal resolution.
- For possible fine reductions, companies must seek to recoup compensation from culpable executive and employees who both (a) had supervisory authority over the employee(s) or business area engaged in the misconduct, and (b) knew of, or were willfully blind to, the misconduct.

Criteria to be Considered Include:



Bonus Eligibility

A prohibition on bonuses for employees who do not satisfy compliance performance requirements



Disciplinary Measures

Disciplinary measures for employees who violate applicable law and others who both (a) had supervisory authority over the employee(s) or business area engaged in the misconduct and (b) knew of, or were willfully blind to, the misconduct



Incentives

Incentives for employees who demonstrate full commitment to compliance processes

What Can Companies Do?



Evaluating current incentive programs, to take into account expectations of Pilot Program

- Revise employment documentation to encompass performance objectives tied to corporate compliance, and otherwise reward and incentivize appropriate employee behavior
- Implement a clawback policy (or amend any existing policy) to allow for the recovery of previously-paid compensation in circumstances such as those contemplated by the Pilot Program



Establishing your right to clawback

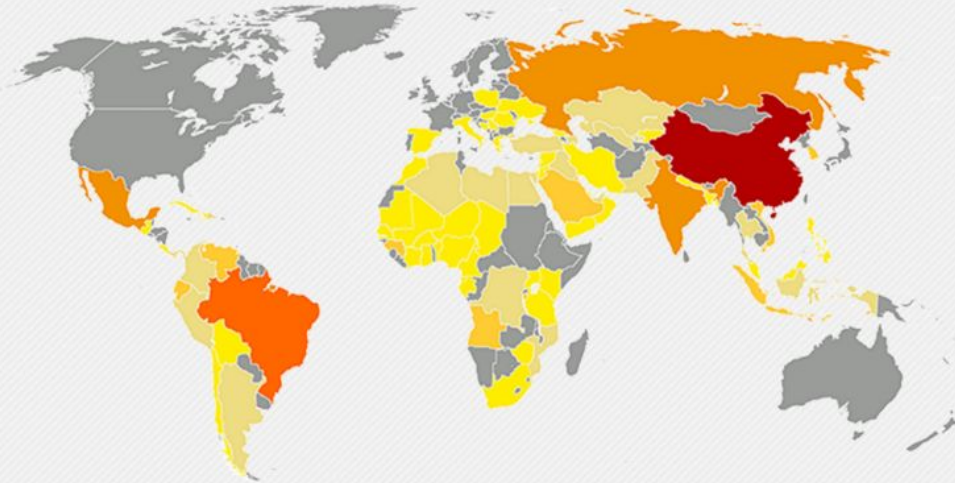
- Add language establishing your right to clawback in employment agreements, offer letters and severance agreements, as well as in the terms of the company's bonus, equity, and incentive plans
- As a US-listed company working to implement the clawbacks mandated by Dodd-Frank (SEC Rule 10D), simultaneously consider DOJ's new guidance and brief your compensation committees, executives, and other appropriate internal stakeholders about potential expansion of those clawback policies and procedures to address the requirements of the Pilot Program

Building a Case of "Good Faith"



Where Most FCPA Cases Originate?

LOCATION OF IMPROPER PAYMENTS, 2014 - 2023*



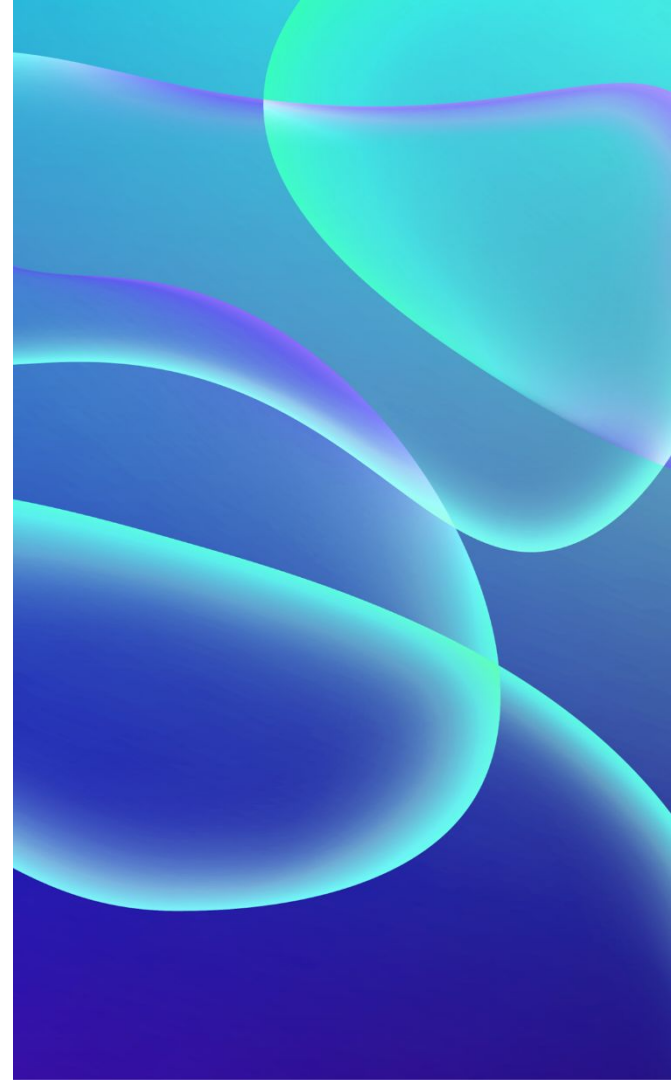
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|-----------|----|
| CHINA | 42 |
| BRAZIL | 24 |
| INDIA | 12 |
| MEXICO | 11 |
| RUSSIA | 11 |
| VENEZUELA | 9 |
| ANGOLA | 8 |
| ECUADOR | 7 |

* DATA IS CURRENT THROUGH MARCH 31, 2023.

The majority of FCPA cases originated in China.

Challenges with Investigations in China

- China's 1988 State Secrets Law with 2010 amendments
- China's 1993 Anti-Unfair Competition Law protects commercial secrets of state-owned enterprises
- China's two new data security laws—the "Data Security Law" and the "Personal Information Protection Law" came into effect at the end of 2021 and provide new guidelines for the handling and transfer of data outside of China
- Recent raids on foreign companies in China
 - A consulting firm and two American firms have been raided as Chinese authorities enforce these new laws



The background features abstract, organic shapes in shades of blue and teal. A large white speech bubble is positioned on the left side, containing the word "Questions".

Questions

Collaboration with competitors: risks and opportunities

Tuesday 3 October 2023

2.30 - 3.30 pm BST

3.30 - 4.30 pm CEST

9.30 - 10.30 am EDT

Tomorrow's session

Baker McKenzie delivers integrated solutions to complex challenges.

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