

## **Anti-Corruption**

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This article discusses the significant legal developments and actions that occurred in the area of anti-corruption in 2017.

### **I. Anti-Corruption Developments in the United States**

Enforcement under the Foreign Corrupt Practices Act (FCPA) ebbed and flowed through the course of 2017, as President Trump's appointees assumed control of the United States Department of Justice (DOJ) and Securities and Exchange Commission (SEC). After a flurry of FCPA settlements in early January, resolved enforcement activity by the agencies dropped significantly over the spring and summer before picking up again toward the end of the year. Carrying over from 2016, this enforcement activity was marked by a continued uptick in coordination and international cooperation between the United States and a number of other countries, resulting in several companies entering into substantial "global" settlements to resolve FCPA-related charges in multiple jurisdictions simultaneously. The DOJ provided insight into how it evaluates corporate compliance programs and formalized its FCPA "Pilot Program" designed to encourage corporate voluntary disclosures. Finally, federal courts decided several important cases that are likely to affect FCPA enforcement going forward.

#### **A. SIGNIFICANT POLICY DEVELOPMENTS**

##### **1. *New DOJ Guidance on Evaluation of Corporate Compliance Programs***

On February 8, 2017, the DOJ Fraud Section issued new guidance for the Evaluation of Corporate Compliance Programs, which takes the form of a list of questions companies can expect to be asked when cooperating with

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DOJ investigations.<sup>1</sup> Overall, the questions reinforce prior direction from the DOJ, while also providing insight into agency priorities and the heightened expectations for senior management and those who oversee compliance programs, including a particular focus on whether management demonstrates its commitment through concrete actions—i.e., “conduct at the top” not just “tone from the top.”<sup>2</sup> The new guidance also emphasizes the need to continually measure the effectiveness of various compliance program components, such as training.<sup>3</sup>

2. *Continuation of Pilot Program; FCPA Corporate Enforcement Policy*

In April 2016, the DOJ launched a one-year FCPA enforcement Pilot Program, which promised substantial reductions in penalties to companies in exchange for voluntarily self-disclosing potential FCPA violations.<sup>4</sup> Under the program, companies that voluntarily disclosed, fully cooperated in any subsequent investigation, and carried out timely and appropriate remediation could be entitled to a fifty percent reduction from the bottom of the applicable sentencing guidelines range, as well as a promise that the DOJ would “consider” declining to prosecute.<sup>5</sup>

The DOJ provisionally extended the Pilot Program in March 2017<sup>6</sup> before formally incorporating its primary components as the official “FCPA Corporate Enforcement Policy” in the US Attorneys’ Manual in November 2017.<sup>7</sup> As formalized, the new policy promises even greater benefits for companies that satisfy its voluntary disclose requirements: a “presumption” that companies will receive a declination in all cases that do not involve “aggravating circumstances,” such as misconduct by senior executives, pervasive wrongdoing within the company, significant profits stemming from the corruption, or criminal recidivism.<sup>8</sup>

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1. U.S. Dep’t of Justice, Criminal Division, Fraud Section, Evaluation of Corporate Compliance Programs (Feb. 8, 2017), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

2. *See id.*

3. *See id.* at 5.

4. Andrew Weissmann, U.S. Dep’t of Justice, Criminal Division, The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance, at 8–9 (Apr. 5, 2016), <https://www.justice.gov/archives/opa/blog-entry/file/838386/download>.

5. *Id.*

6. Kenneth A. Blanco, Acting Assistant Att’y Gen., U.S. Dep’t of Justice, Criminal Div., Address at the American Bar Association Nat’l Inst. on White Collar Crime (Mar. 10, 2017), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-kenneth-blanco-speaks-american-bar-association-national>.

7. Rod J. Rosenstein, Deputy Att’y Gen., U.S. Dep’t of Justice Remarks at the 34th Int’l Conference on the Foreign Corrupt Practices Act (Nov. 29, 2017), <https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign>.

8. *Id.*; *see also* U.S. Attorney’s Manual, § 9-47.120 (2017), <https://www.justice.gov/usam/usam-9-47000-foreign-corrupt-practices-act-1977#9-47.120> (last visited Feb. 7, 2018).

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B. CORPORATE ENFORCEMENT ACTIONS

1. *Mondelez International, Inc. and Cadbury Limited*

On January 6, 2017, the Illinois-based snack company Mondelez International, Inc., formerly Kraft Foods, entered into a US \$13 million settlement with the SEC to resolve FCPA books-and-record and internal-controls allegations against the U.K.-based Cadbury Limited, which Mondelez acquired in 2010.<sup>9</sup> According to the SEC's Cease-and-Desist Order, in 2010 Cadbury Limited's subsidiary hired an agent to obtain licenses necessary to build a chocolate factory in Baddi, Himachal Pradesh, India.<sup>10</sup> After being paid approximately US \$90,000 in "consulting" fees, the agent withdrew most of the funds in cash, and "[d]uring this time period Cadbury India obtained some of the licenses and approvals" for its factory.<sup>11</sup> According to the SEC, the payment to this agent was not accurately reflected in Cadbury India's books and records, which "created the risk" that a portion of the consulting fee had been used for improper purposes.<sup>12</sup>

2. *Zimmer Biomet Holdings, Inc.*

On January 12, 2017, the Indiana-based medical-device manufacturer Zimmer Biomet Holdings, Inc., entered into a Deferred Prosecution Agreement (DPA) with the DOJ and consented to a Cease-and-Desist Order from the SEC to resolve allegations that the company had violated the FCPA's anti-bribery, books-and-records, and internal-controls provisions.<sup>13</sup> As part of the settlement, Zimmer agreed to pay nearly US \$30.5 million in fines, disgorgement and prejudgment interest.<sup>14</sup> Previously, Biomet, Inc., which Zimmer acquired in 2014, made unlawful payments to customs officials and healthcare professionals in Latin America and China to secure lucrative business for its medical devices.<sup>15</sup> Biomet had entered into an FCPA settlement with the agencies in 2012, agreeing to pay almost US \$22.8 million in criminal penalties and disgorgement of profits to resolve both these allegations and a related matter.<sup>16</sup>

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9. Cadbury Ltd., Exchange Act Release No. 3841, ¶ 19-20, 2017 WL 66590 (ALJ Jan. 6, 2017).

10. *Id.* ¶ 1.

11. *See id.* ¶ 11.

12. *See id.* ¶ 13.

13. Press Release, U.S. Dep't of Justice, Zimmer Biomet Holdings Inc. Agrees to Pay \$17.4 Million to Resolve Foreign Corrupt Practices Act Charges (Jan. 12, 2017), <https://www.justice.gov/opa/pr/zimmer-biomet-holdings-inc-agrees-pay-174-million-resolve-foreign-corrupt-practices-act>.

14. *See id.*

15. Press Release, U.S. Dep't of Justice, Third Medical Device Company Resolves Foreign Corrupt Practices Act Investigation (Mar. 26, 2012), <https://www.justice.gov/opa/pr/third-medical-device-company-resolves-foreign-corrupt-practices-act-investigation>.

16. *Id.*

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3. *Sociedad Química y Minera de Chile (SQM)*

On January 13, 2017, Sociedad Química y Minera de Chile (SQM), a Chilean-based chemical and mining company, entered into a DPA with the DOJ and consented to a Cease-and-Desist Order from the SEC, agreeing to pay more than US \$30 million in criminal and civil fines to resolve allegations that the company had violated the FCPA's books-and-records and internal-controls provisions.<sup>17</sup> According to the pleadings, SQM's former CEO made approximately US \$15 million in improper payments to Chilean politicians, political candidates, and related individuals and entities from 2008 to 2015, some of whom have influence over the government's mining plans in Chile.<sup>18</sup>

4. *Rolls-Royce Holdings plc*

On January 17, 2017, U.K.-based engineering company Rolls-Royce Holdings plc agreed to a US \$195 million DPA with the DOJ to resolve FCPA anti-bribery charges based on allegations that the company's U.S.-based energy subsidiary had made millions of dollars in unlawful payments to officials at state-owned oil-and-gas companies in Angola, Azerbaijan, Brazil, Iraq, Kazakhstan, and Thailand in exchange for assistance in providing confidential information and awarding contracts to the company and its affiliates.<sup>19</sup> Under the DPA, the DOJ agreed to credit Rolls-Royce with US \$26 million to be paid to Brazilian prosecutors in connection with overlapping charges, reducing the company's U.S. fine to US \$169 million.<sup>20</sup> On the same day, Rolls-Royce also entered into a parallel settlement with the U.K.'s Serious Fraud Office (SFO), agreeing to pay approximately US \$604 million in connection with related charges, resulting in a global settlement of more than US \$800 million.<sup>21</sup>

5. *Las Vegas Sands Corp.*

On January 17, 2017, Las Vegas Sands Corp. (Sands), a Nevada-based casino and resort company, entered into a US \$6.96 million Non-Prosecution Agreement (NPA) with the DOJ to resolve allegations involving

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17. Press Release, U.S. Dep't of Justice, Chilean Chem. and Mining Co. Agrees to Pay More Than \$15 Million to Resolve Foreign Corrupt Practices Act Charges (Jan. 13, 2017), <https://www.justice.gov/opa/pr/chilean-chemicals-and-mining-company-agrees-pay-more-15-million-resolve-foreign-corrupt>.

18. *Id.*

19. Press Release, U.S. Dep't of Justice, Rolls-Royce plc Agrees to Pay \$170 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act Case (Jan. 17, 2017), <https://www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act>.

20. *Id.*

21. *Id.*

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questionable payments in China.<sup>22</sup> According to the pleadings, from 2006 to 2009, Sands's Chinese subsidiaries transferred approximately US \$6 million to a "consultant" who represented himself as a former government official and whose services often lacked a discernable business justification. Sands previously consented to a Cease-and-Desist Order with the SEC on related charges, agreeing to pay US \$9 million in civil penalties in April 2016.<sup>23</sup>

6. *Orthofix International N.V.*

On January 18, 2017, Orthofix International N.V., a Curaçao-incorporated, Texas-headquartered medical device company, consented to a US \$6.1 million Cease-and-Desist Order from the SEC to resolve FCPA books-and-records and internal-controls charges relating to misconduct in Brazil.<sup>24</sup> Specifically, an Orthofix subsidiary allegedly colluded with third parties to make illicit payments to doctors at state-owned hospitals in Brazil to encourage the prescription of Orthofix products. In a parallel proceeding, Orthofix agreed to pay US \$8.25 million to resolve accounting violations by the same Brazilian subsidiary.<sup>25</sup> Orthofix had previously entered into an FCPA settlement with the SEC and DOJ in 2012, agreeing to pay US \$7.4 million stemming from corruption allegations against its Mexican subsidiary.<sup>26</sup>

7. *Linde Group Companies*

On June 16, 2017, the DOJ issued an FCPA-related declination to Linde North America, Inc. and Linde Gas North America LLC, two privately-held U.S. subsidiaries of The Linde Group, a German industrial gas company.<sup>27</sup> In connection with the declination, Linde agreed to disgorge more than US \$11.2 million earned from an allegedly corrupt deal between a Linde subsidiary, Spectra Gases, Inc., and the National High Technology Center, a technology consortium owned by the Republic of Georgia.<sup>28</sup>

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22. Press Release, U.S. Dep't of Justice, Las Vegas Sands Corp. Agrees to Pay Nearly \$7 Million Penalty to Resolve FCPA Charges Related to China and Macao (Jan. 19, 2017), <https://www.justice.gov/opa/pr/las-vegas-sands-corporation-agrees-pay-nearly-7-million-penalty-resolve-fcpa-charges-related>.

23. *Id.*

24. Press Release, U.S. Sec. & Exch. Comm'n, Med. Device Co. Charged with Accounting Failures and FCPA Violations, (Jan. 18, 2017), <https://www.sec.gov/news/pressrelease/2017-18.html>.

25. *Id.*

26. Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Orthofix International With FCPA Violations, 2012-133 (July 10, 2012), <https://www.sec.gov/news/press-release/2012-2012-133htm>.

27. Letter from Jacob T. Elberg, U.S. Atty's Office, & Laura N. Perkins, U.S. Dep't of Justice, to Lucinda Low & Thomas Best, counsel for Linde, para. 6 (June 16, 2017), <https://www.justice.gov/criminal-fraud/file/974516/download>.

28. *Id.*

8. *CMD Smith*

On June 29, 2017, the DOJ issued an FCPA-related declination to CDM Smith, a privately-held engineering and construction company based in Massachusetts.<sup>29</sup> In connection with the declination, CDM Smith agreed to disgorge approximately US \$4 million in profits earned on highway construction contracts in India, where the company and its subsidiary allegedly paid kickbacks to officials at the National Highways Authority of India through fraudulent subcontractors.<sup>30</sup>

9. *Halliburton Company*

On July 27, 2017, Halliburton Company, a Texas-based oilfield services company, consented to a Cease-and-Desist Order from the SEC, agreeing to pay U.S. \$29 million in fines, disgorgement and judgment interest to settle FCPA books-and-records and internal-accounting charges related to questionable payments in Angola.<sup>31</sup> A Halliburton vice-president had reportedly circumvented several systems of internal control to pay more than U.S. \$3.7 million to a local Angolan company with ties to an official from Sonangol, Angola's state-owned oil company. Over this same period, Sonangol approved the award of seven lucrative subcontracts to Halliburton.<sup>32</sup>

10. *Telia Company AB*

On September 21, 2017, Swedish telecommunications giant Telia Company AB and its Uzbek subsidiary, Coscom LLC entered into a multi-jurisdictional anti-corruption settlement with the DOJ, SEC, Dutch Public Prosecutor's Office, and Swedish Prosecution Authority, agreeing to pay more than U.S. \$965 million to resolve allegations of corruption in Uzbekistan.<sup>33</sup> Telia, operating through its Uzbek subsidiary, had allegedly made more than U.S. \$331 million in improper payments to a high-level official in Uzbekistan in exchange for that official's understood influence over the local telecommunications regulator.<sup>34</sup> In settling with U.S. authorities, Telia agreed to pay at least U.S. \$483 million in criminal fines

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29. Letter from Nicola J. Mrazek, U.S. Dep't of Justice, Nathaniel B. Edmonds, counsel for CMD Smith, para 5 (June 21, 2017), <https://www.justice.gov/criminal-fraud/page/file/976976/download>.

30. *Id.*

31. Press Release, U.S. Sec. & Exch. Comm'n, Halliburton Paying \$29.2 Million to Settle FCPA Violations (July 27, 2017), <https://www.sec.gov/news/press-release/2017-133>.

32. *Id.*

33. Press Release, U.S. Dep't of Justice, Telia Co. AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than \$965 Million for Corrupt Payments in Uzb., para. 8 (Sept. 21, 2017), <https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965>.

34. *Id.*

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and disgorgement, depending offsets for anticipated payments to foreign enforcement authorities.<sup>35</sup>

11. *Alere, Inc.*

On September 28, 2017, Alere Inc., a Massachusetts-based manufacturer of diagnostic tests, consented to a US \$13 million Cease-and-Desist Order with the SEC, a portion of which settled FCPA books-and-records and internal-accounting-controls charges against the company's subsidiaries in Colombia and India.<sup>36</sup> In Colombia, Alere's liability arose out of its recent acquisition of a local subsidiary whose former general manager continued an allegedly corrupt relationship with a state-controlled healthcare provider. And in India, Alere's liability arose out of a four percent "commission" paid to local government officials for the purchase of unneeded malaria testing kits.<sup>37</sup>

12. *SBM Offshore N.V.*

On November 29, 2017, SBM Offshore N.V., a Netherlands-based oil and gas company, and its U.S. subsidiary agreed to pay a U.S. \$238 million criminal fine as part of a packaged DPA and guilty plea with the DOJ to resolve anti-bribery-related charges under the FCPA.<sup>38</sup> From 1996 until at least 2012, SBM allegedly paid more than U.S. \$180 million in commissions to intermediaries, knowing that a portion of these commissions would be used to bribe government officials in Angola, Brazil, Equatorial Guinea, Iraq, and Kazakhstan in an attempt to obtain or retain business.<sup>39</sup>

13. *Keppel Offshore & Marine Ltd.*

On December 22, 2017, Singapore-based Keppel Offshore & Marine Ltd. reached a U.S. \$422 million with enforcement authorities in Brazil, Singapore, and the United States.<sup>40</sup> The company, which operates shipyards and repairs shipping vessels, allegedly paid approximately U.S. \$55 million in bribes to Brazilian government officials, including executives at the state-owned oil company Petrobras, which allowed Keppel to win 13 contracts with Petrobras and an unnamed Brazilian entity. In its DPA with Keppel,

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35. *Id.*

36. Alere Inc., Exchange Act Release No. 10417, at 14, 2017 WL 4297258 (ALJ Sept. 28, 2017).

37. *Id.*

38. Press Release, U.S. Dep't of Justice, SBM Offshore N.V. and United States-Based Subsidiary Resolve Foreign Corrupt Practices Act Case Involving Bribes in Five Countries, para. 1 (Nov. 29, 2017), <https://www.justice.gov/opa/pr/sbm-offshore-nv-and-united-states-based-subsidiary-resolve-foreign-corrupt-practices-act-case>.

39. *Id.*

40. Press Release, U.S. Dep't of Justice, Keppel Offshore & Marine Ltd. and U.S. Based Subsidiary Agree to Pay \$422 Million in Global Penalties to Resolve Foreign Bribery Case, para. 1 (Dec. 22, 2017), <https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties>.

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the DOJ credited the company with fines paid under parallel agreements, including US \$211.1 million to Brazil authorities and US \$105.5 million to Singaporean authorities.<sup>41</sup>

C. RECENT LITIGATION

1. *Lucia v. SEC*

On June 26, 2017, an *en banc* panel of the U.S. Court of Appeals for the D.C. Circuit split 5–5 in declining to review a lower court’s decision regarding the constitutionality of the SEC’s Administrative Law Judges (ALJs).<sup>42</sup> At issue in the lower court was whether SEC ALJs are “Officers of the United States” within the meaning of the Appointments Clause of the Constitution.<sup>43</sup> If so, they must be appointed by the President with the advice and consent of the Senate, rendering unconstitutional the more mundane process under which they are currently hired. The lower court held that ALJs are not subject to the Appointments Clause because they do not issue final decisions.<sup>44</sup> The D.C. Circuit’s intra-circuit split reflects a broader circuit split across the country, with the 10th Circuit previously holding that the SEC ALJs’ current hiring process violates the Appointments Clause.<sup>45</sup> The Supreme Court is expected to resolve this issue within the next year.

2. *Kokesh v. SEC*

On June 5, 2017, the U.S. Supreme Court unanimously held in *Kokesh v. SEC* that the SEC disgorgement constitutes a “penalty” under federal law rather than an equitable remedy, and is therefore subject to a five-year statute of limitations.<sup>46</sup> Absent waiver, the decision constrains the SEC’s ability to impose disgorgement on conduct occurring outside of the five-year limitations period, which is forcing the SEC to shift its enforcement strategies, most notably by speeding up the pace of its investigations.

3. *United States v. Allen*

On July 19, 2017, the U.S. Court of Appeals for the Second Circuit held in *United States v. Allen* that the use of foreign compelled testimony violates the Fifth Amendment privilege against compelled self-incrimination.<sup>47</sup> During parallel U.S. and U.K. investigations into manipulation of the London Interbank Offered Rate (LIBOR), U.K. prosecutors compelled two defendants to testify against themselves by threatening imprisonment if they

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41. *Id.*

42. *Raymond J. Lucia Cos. v. Sec. & Exch. Comm’n*, 868 F.3d 1021 (D.C. Cir. 2017).

43. *Raymond J. Lucia Cos. v. Sec. & Exch. Comm’n*, 832 F.3d 277, 283 (D.C. Cir. 2016).

44. *Id.*

45. *Bandimere v. Sec. & Exch. Comm’n*, 844 F.3d 1168, 1181 (10th Cir. 2016).

46. *Kokesh v. Sec. & Exch. Comm’n*, 137 S. Ct. 1635, 1639 (2017).

47. *United States v. Allen*, 864 F.3d 63, 82 (2d Cir. 2017).



refused to be interviewed, a practice permitted in the U.K., but prohibited by the U.S. Constitution's Fifth Amendment.<sup>48</sup> When U.S. prosecutors tried to use transcripts from these interviews to prepare a witness for trial, the two defendants objected, arguing that the Constitution's protections against compelled testimony continue to apply, even in cases where the United States is collaborating with foreign enforcement authorities.<sup>49</sup> The Second Circuit agreed, holding the use of such testimony unconstitutional.<sup>50</sup>

## II. Enforcement Action Abroad

### A. CASES

#### 1. *Brazil*

Launched in 2014 as an investigation into money laundering at Brazil's state oil-company, *Petróleo Brasileiro SA* (*Petrobras*), Brazil's massive anti-corruption probe *Operation Car Wash* (*Operación Lava Jato*) continues to yield major dividends in the form of major arrests, criminal convictions, and billions of dollars in recovered assets.

##### a. Senator and Ex-President Charged

On August 22, 2017, Brazil's Federal Supreme Court unanimously approved charges of corruption, money laundering, and racketeering against Senator Fernando Collor.<sup>51</sup> Collor is accused of receiving about U.S. \$9 million in bribes between 2010 and 2014 for operations of a subsidiary of *Petrobras*.<sup>52</sup> From 1990 to 1992, Collor served as Brazil's first democratically elected president after many years of military rule.<sup>53</sup>

##### b. Several Law Makers Charged with Corruption

In March 2017, Eduardo Cunha, the former speaker of the lower house of the National Congress of Brazil, was sentenced to fifteen years and four months in prison for money laundering, tax evasion, and corruption.<sup>54</sup> On September 7, 2017, six other lawmakers from current President Michel Temer's Brazilian Democracy Movement Party were formally charged with

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48. *Id.*

49. *Id.*

50. *Id.*

51. AFP, *Brazil's Ex-president Collor is Charged in Petrobras Graft Case*, *GUARDIAN* (Aug. 23, 2017, 11:48 AM), <https://guardian.ng/news/brazils-ex-president-collor-is-charged-in-petrobras-graft-case/>; Press Release, Brazil Supremo Tribunal Federal, 2<sup>a</sup> Turma recebe denúncia contra senador Fernando Collor na Lava-Jato (Aug. 22, 2017), <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=353302>.

52. AFP, *supra* note 23.

53. *Id.*

54. *Brazil Ex-Speaker Eduardo Cunha Jailed for 15 Years*, *BBC NEWS* (Mar. 30, 2017), <http://www.bbc.com/news/world-latin-america-39442005>.

corruption-related offenses.<sup>55</sup> The men are accused of establishing cartels of companies for the sole purpose of bribing officials for public contracts.

c. Former Presidents Charged, Convicted and/or Sentenced

In July 2017, the former president of Brazil, Luiz Inácio Lula da Silva, was found guilty of corruption and money laundering and sentenced to nearly ten years in prison.<sup>56</sup> In September 2017, Lula da Silva and former president Dilma Rousseff faced new charges of cartel formation, corruption, and money laundering involving Petrobras.<sup>57</sup>

d. Current President Charged

In June 2017, Brazil's current president, Michel Temer, was charged with bribery and corruption, thereby becoming the first sitting Brazilian president to face corruption charges.<sup>58</sup> In August, Brazilian lawmakers voted to spare Temer from standing trial.<sup>59</sup> In September, Temer was charged with obstruction of justice and racketeering. But in October, lawmakers once again blocked a corruption trial against him from moving forward.<sup>60</sup>

2. *China*

In June 2017, eight provincial and ministerial officials were sentenced to terms of up to life in prison for corruption.<sup>61</sup> Those convicted include Liu Zhigeng, former vice governor of Guangdong Province, Wang Baoan, former head of the National Bureau of Statistics, and Lu Ziyue, former mayor of Ningbo in Zhejiang Province.<sup>62</sup>

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55. Ricardo Brito, *Brazil Prosecutor Charges Members of Temer's Party with Criminal Organization*, REUTERS, (Sept. 8, 2017, 6:08 PM), <https://www.reuters.com/article/us-brazil-corruption-temer/brazil-prosecutor-charges-members-of-temers-party-with-criminal-organization-idUSKCN1BJ2PU>.

56. Marina Lopes, *Former Brazilian President Lula Convicted of Corruption and Money Laundering*, WASH. POST (July 12, 2017), [https://www.washingtonpost.com/world/the\\_americas/former-brazilian-president-lula-convicted-of-corruption-and-money-laundering/2017/07/12/dd3b7e72-672d-11e7-94ab-5b1f0ff459df\\_story.html?utm\\_term=.44d381ea6b5f](https://www.washingtonpost.com/world/the_americas/former-brazilian-president-lula-convicted-of-corruption-and-money-laundering/2017/07/12/dd3b7e72-672d-11e7-94ab-5b1f0ff459df_story.html?utm_term=.44d381ea6b5f).

57. *Brazil Former Presidents Lula and Rousseff Charged In Corruption Case*, REUTERS (Sept. 5, 2017, 7:14 PM), <https://www.reuters.com/article/us-brazil-corruption/brazil-former-presidents-lula-and-rousseff-charged-in-corruption-case-idUSKCN1BH013>.

58. *Brazil's Michel Temer Charged with Corruption*, BBC NEWS (June 27, 2017), <http://www.bbc.com/news/world-latin-america-40413540>.

59. Ernesto Londoño, *Brazilian Lawmakers Reject Bribery Prosecution of President Michel Temer*, N.Y. TIMES (Aug. 2, 2017), <https://www.nytimes.com/2017/08/02/world/americas/brazil-michel-temer-corruption-charges.html>.

60. Anna Jean Kaiser, *Brazil's President Temer Avoids a New Corruption Trial*, WASH. POST (Oct. 25, 2017), [https://www.washingtonpost.com/world/the\\_americas/brazils-president-temer-appears-set-to-avoid-a-new-corruption-trial/2017/10/25/6ae8aa24-b832-11e7-9b93-b97043e57a22\\_story.html?utm\\_term=.Eb8a179d8dc9](https://www.washingtonpost.com/world/the_americas/brazils-president-temer-appears-set-to-avoid-a-new-corruption-trial/2017/10/25/6ae8aa24-b832-11e7-9b93-b97043e57a22_story.html?utm_term=.Eb8a179d8dc9).

61. Xiang Bo, *China Focus: Conviction of 8 "Big Tigers" Heralds Prolonged Anti-Graft Fight*, XINHUA NET (May 1, 2017), [http://news.xinhuanet.com/english/2017-06/01/c\\_136332285.htm](http://news.xinhuanet.com/english/2017-06/01/c_136332285.htm).

62. *Id.*

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3. *France*

In January 2017, Teodorin Obiang, Equatorial Guinea's Second Vice President and the son of the country's president, was indicted in France for embezzlement, money-laundering, corruption, and abuse of trust.<sup>63</sup> Obiang was convicted in October 2017 and given three-year suspended sentence and a \_ 30 million (approximately U.S. \$35 million) fine.<sup>64</sup> The court also ordered the confiscation of Obiang's assets, including a mansion located at 42 Avenue Foch, near the Champs-Élysées in Paris.<sup>65</sup>

Obiang's trial in France triggered proceedings before the International Court of Justice (ICJ) to determine whether Obiang was entitled to diplomatic immunity and the legal status of his Paris mansion.<sup>66</sup> On September 29, 2016, Equatorial Guinea asked the ICJ to order that France suspend all the criminal proceedings against Obiang and ensure that the mansion be treated as premises of Equatorial Guinea's diplomatic mission in France, assuring its inviolability.<sup>67</sup> Obiang's case is part of the landmark French inquiry proceedings known as "biens mal acquis," or ill-gotten gains cases, which implicate three currently serving African leaders and their families.<sup>68</sup>

4. *Italy*

In April 2017, proceedings were instituted in Italy against Royal Dutch Shell (Shell) and Eni S.p.A. (Eni) over a U.S. \$1.1 billion bribery scheme relating to the purchase of one of the most lucrative oil fields in Africa—Oil Prospecting License (OPL) 245.<sup>69</sup> Under the bribery scheme, Shell and Eni paid U.S. \$1.3 billion to the Nigerian government for access to the field with an understanding that U.S. \$1.1 billion of the money paid would be passed

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63. *Equatorial Guinea President's Son Goes on Trial Over \$105M in Assets*, NBC NEWS (Jan. 3, 2017, 9:32 AM ET), <https://www.nbcnews.com/news/world/equatorial-guinea-president-s-son-goes-trial-over-100m-assets-n702531>.

64. Emmanuel Jarry, *Equatorial Guinea Leader's Son Found Guilty of Embezzlement by French Court*, REUTERS (Oct. 27, 2017, 5:35 AM), <https://www.reuters.com/article/us-france-equatorial-trial/equatorial-guinea-leaders-son-found-guilty-of-embezzlement-by-french-court-idUSKBN1CW1BO>.

65. Le Parisien, with AFP, *Biens mal acquis : prison avec sursis pour le fils du président de Guinée équatoriale [Badly acquired property: suspended prison sentence for the son of the President of Equatorial Guinea]*, LE PARISIEN (Oct. 27, 2017, 11:05 AM), <http://www.leparisien.fr/faits-divers/biens-mal-acquis-prison-avec-sursis-pour-le-fils-du-president-de-guinee-equatoriale-27-10-2017-7358073.php>.

66. Immunities and Criminal Proceedings (Eq. Guinea v. Fr.), 2016 I.C.J. 246, 246 (July 1).

67. *Id.*

68. Angélique Chrisafis, *France Impounds African Autocrats' 'Ill-Gotten Gains'*, THE GUARDIAN (Feb. 6, 2012), <https://www.theguardian.com/world/2012/feb/06/france-africa-autocrats-corruption-inquiry>.

69. Chloe Farand, *Fresh Revelations of Alleged Shell Corruption to be Heard in Italian Court*, DESMOGUK (Apr. 20, 2017), <https://www.desmog.uk/2017/04/20/italian-court-decide-whether-shell-face-trial-over-allegations-corruption-amidst-fresh-revelations>.

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on to a firm controlled by a former Nigerian oil minister.<sup>70</sup> In October 2017, the Milan Public Prosecutor's Office issued a formal Request for Indictment on bribery charges for four former Shell executives and the company itself.<sup>71</sup> Back in January 2017, a court in Nigeria issued an order ceding control of OPL 245 to the Nigerian Government pending investigation and prosecution of all implicated in the deal.<sup>72</sup> Barnaby Pace of the anti-corruption campaign group Global Witness believes that "[t]his could be the biggest corporate bribery trial in history, and a watershed moment for the oil industry . . ."<sup>73</sup>

5. *Nigeria*

On October 11, 2017, a judge of the Federal High Court of Nigeria ordered the final forfeiture of fifty-six houses valued at about U.S. \$21.9 million, all belonging to a former Minister of Petroleum Resources, Diezani Alison-Madueke.<sup>74</sup> Diezani is currently implicated in money-laundering probes in the U.S. and U.K.

6. *South Africa*

On October 13, 2017, South Africa's Supreme Court of Appeal upheld a lower court decision to reinstate corruption charges against President Jacob Zuma.<sup>75</sup> The charges stem from a U.S. \$2 billion government arms deal that occurred in the late 1990s before Zuma became President. In 2009, some 783 charges against Zuma relating to fraud, racketeering, and corruption were set aside.<sup>76</sup> In an April 2016 ruling, the High Court determined that the decision to drop the charges against Zuma was irrational and ordered the charges to be reinstated.<sup>77</sup> Zuma appealed. The decision is a major blow to

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70. *Id.*

71. Camilla Hodgson, *4 Former Shell Execs are a Step Closer to Being Charged for an Alleged \$1.1 Billion Bribery Scheme*, BUS. INSIDER (Oct. 18, 2017, 2:00 AM), <http://www.businessinsider.com/shell-request-alleged-bribery-2017-10>.

72. *Court Orders Forfeiture of Malabu Oil Block*, ECON. & FIN. CRIMES COMM'N [EFCC] (Jan. 26, 2016), <https://efccnigeria.org/efcc/news/2287-court-orders-forfeiture-of-malabu-oil-block>.

73. Press Release, Glob. Witness, *Shell Execs. Charged in Lead up to Landmark Trial Over Billion Dollar Nigerian Bribery Scheme* (Oct. 15, 2017), <https://www.globalwitness.org/en/press-releases/shell-executives-charged-lead-landmark-trial-over-billion-dollar-nigerian-bribery-scheme/>.

74. *Court Orders Final Forfeiture of Diezani's 56 Houses*, EFCC (Oct. 11, 2017), <http://efccnigeria.org/efcc/news/2810-court-orders-final-forfeiture-of-diezani-s-56-houses-2>.

75. *Zuma v. Democratic Alliance*, 2018 (1) SA 200 (SCA), ¶ 95 (S. Afr.).

76. *Zuma given November 30 deadline ahead of South Africa decision on graft charges*, REUTERS (Oct. 20, 2017, 9:46 AM), <https://www.reuters.com/article/us-safrica-zuma/zuma-given-november-30-deadline-ahead-of-south-africa-decision-on-graft-charges-idUSKBN1CP1XM>.

77. *Democratic Alliance v. Acting Nat'l Dir. of Pub. Prosecutions* 2016 (2) SACR 1 (GP) at ¶ 94 (S. Afr.).

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Zuma's long-running battle to avoid prosecution for corruption. Zuma has faced fresh corruption allegations since taking office.<sup>78</sup>

7. *Spain*

Spain secured its first conviction under its anti-foreign bribery law, enacted more than a decade ago. In February 2017, two executives at a Spanish company were convicted of bribing Equatorial Guinea's Minister of Education to secure contracts with the country's education system.<sup>79</sup> Spain ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) in 2000.<sup>80</sup> Spain's Anti-Foreign Bribery Law—Law 15/2003—was subsequently passed to implement the Convention.

8. *Switzerland*

In a press release on July 5, 2017, the Geneva Public Prosecutor announced that Addax Petroleum (Addax) had paid 31 million Swiss Francs to settle an investigation into suspected bribery of officials in Nigeria.<sup>81</sup> Acting under article 322 of the Criminal Code, the Public Prosecutor's office initiated criminal proceedings against Addax in February 2017.<sup>82</sup> The chief executive officer and legal director of Addax in Geneva were both arrested and charged in March 2017.<sup>83</sup>

9. *United Kingdom – Deferred Prosecution Agreements*

On January 17, 2017, U.K.'s SFO entered into a £497.25m (approximately US \$672 million) DPA with Rolls-Royce PLC.<sup>84</sup> A culmination of a four-

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78. See PUB. PROSECUTOR S. AFR., STATE OF CAPTURE, REPORT NO. 6 OF 2016/17, at §§ 7-8 (Oct. 14, 2016), <https://cdn.24.co.za/files/Cms/General/d/4666/3f63a8b78d2b495d88f10ed060997f76.pdf>.

79. Karolos Seeger Et. Al., *Spain Wins First Conviction of Individuals for Bribery of a Foreign Public Official*, FCPA UPDATE, A GLOBAL ANTI-CORRUPTION NEWSLETTER (Debevoise & Plimpton), Mar. 2017, at 1, 4, [https://www.debevoise.com/~media/files/insights/publications/2017/03/fcpa\\_update\\_march\\_2017.pdf](https://www.debevoise.com/~media/files/insights/publications/2017/03/fcpa_update_march_2017.pdf).

80. *Id.* at 1–2.

81. Press Release, Geneva Pub. Prosecutor, Procédure contre Addax: réparation à hauteur de 31 millions de francs et classement de la procédure [Proceedings Against Addax: Compensation Of 31 Million Francs And Classification Of The Proceedings] (July 5, 2017), <http://ge.ch/justice/procedure-contre-addax-reparation-hauteur-de-31-millions-de-francs-et-classement-de-la-procedure>.

82. *Id.*

83. *Addax CEO, Legal Director Arrested in Bribery Case: Geneva Prosecutor*, REUTERS (Mar. 24, 2017, 5:07 AM), <http://www.reuters.com/article/us-swiss-addax/addax-ceo-legal-director-arrested-in-bribery-case-geneva-prosecutor-idUSKBN16V2VE>.

84. Press Release, U.K. Serious Fraud Office, SFO Completes £497.25m Deferred Prosecution Agreement with Rolls-Royce PLC (Jan. 17, 2017), <https://www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/>.

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year investigation that started in 2013,<sup>85</sup> the DPA covers conduct that took place across seven jurisdictions. This is the Office's third and largest DPA since the power became available to prosecutors in 2014.<sup>86</sup>

10. *South Korea*

In 2017, several of South Korea's chaebols were rocked by massive corruption scandals. On August 25, 2017, Lee Jae-yong, vice chairman of Samsung Electronics Co. and heir apparent to the Samsung empire, was convicted of bribery and sentenced to five years in prison.<sup>87</sup> In April, Shin Dong-bin, chairman of Lotte Group, was indicted on bribery charges that implicate South Korea's former president, Park Geun-hye.<sup>88</sup> Park Geun-hye was impeached in December 2016; in March 2017, the country's Constitutional Court affirmed the impeachment.<sup>89</sup> Park Geun-hye has since been indicted on bribery charges.<sup>90</sup>

B. ANTI-CORRUPTION LEGISLATION AND INITIATIVES

1. *China*

In February 2017, the State Council of the People's Republic of China put forth a bill to amend the country's Law Against Unfair Competition (LAUC).<sup>91</sup> One of the significant changes in the proposed amendment is the presumption of vicarious liability of an employer for acts of bribery committed by employees. Article 7 provides *inter alia* that "[w]here the employees of business operators carry out bribery, it shall be viewed as the conduct of the business operator, except for where there is evidence showing that the employee in question's conduct had no relation to obtaining

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85. Press Release, U.K. Serious Fraud Office, Rolls-Royce: Opened Investigation (Dec. 3, 2013), <https://www.sfo.gov.uk/2013/12/23/statement-rolls-royce-2/>.

86. Press Release, U.K. Serious Fraud Office, *supra* note 48.

87. Anna Fifield, *Samsung Group's Heir Lee Jae-yong Sentenced to Five Years in a Corruption Case*, WASH. POST (Aug. 25, 2017), [https://www.washingtonpost.com/world/samsungs-heir-apparent-found-guilty-of-corruption-sentenced-to-five-years-in-jail/2017/08/25/03a71976-894e-11e7-9ce7-9e175d8953fa\\_story.html?utm\\_term=.5a82fb756913](https://www.washingtonpost.com/world/samsungs-heir-apparent-found-guilty-of-corruption-sentenced-to-five-years-in-jail/2017/08/25/03a71976-894e-11e7-9ce7-9e175d8953fa_story.html?utm_term=.5a82fb756913).

88. Jung Suk-ye, *Lotte Group Chairman Failed to Avoid Indictment unlike SK Group Head*, BUS. KOREA (Apr. 18, 2017, 2:30 PM), <http://www.businesskorea.co.kr/english/news/insight/17862-contrasting-decisions-lotte-group-chairman-failed-avoid-indictment-unlike-sk>.

89. *South Korea President Park Geun-hye Ousted by Court*, BBC NEWS (Mar. 10, 2017), <http://www.bbc.com/news/world-asia-39202936>.

90. Kim Tong-Hyung & Foster Klug, *Ex-South Korean President Park Begins Corruption Trial*, USA TODAY (May 22, 2017), <https://www.usatoday.com/story/news/world/2017/05/22/former-south-korean-president-corruption-trial/102040214/>.

91. Mike Goldammer & John Chen, *The New Anti-Unfair Competition Law - a new era of curbing commercial bribery in China?*, TAYLOR WESSING (Nov. 9, 2017), <https://china.taylorwessing.com/en/the-new-anti-unfair-competition-law-a-new-era-of-curbing-commercial-bribery-in-china>.

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transaction opportunities or competitive advantages for the business operator.”<sup>92</sup>

2. *Kenya*

On January 13, 2017, the Kenya Bribery Act 2016 (the Act) went into effect.<sup>93</sup> The principal objective of the Act is to provide for the prevention, investigation, and punishment of bribery. The Act applies to public officers as well as private entities.<sup>94</sup> The Act addresses foreign bribery and makes it an offence to bribe a foreign official “with the intention of influencing that official’s capacity. . .”<sup>95</sup> The Act imposes an obligation on public and private entities to have in place bribery prevention procedures.<sup>96</sup>

3. *Mexico*

Enacted on July 18, 2016, Mexico’s General Law of Administrative Responsibility (GLAR) entered into force on July 19, 2017.<sup>97</sup> The GLAR, together with two earlier statutes, the General Law for the National Anticorruption System and the Organic Law for the Federal Tribunal on Administrative Justice, implement Mexico’s new National Anti-Corruption System. The OECD takes the position that the passage of these laws “substantially transforms the anti-corruption architecture of Mexico by putting in place measures that the OECD considers effective . . . .”<sup>98</sup>

4. *Peru*

In March 2017, Peru became the first country in Latin America to formally adopt ISO 37001:2016 for Anti-Bribery Management Systems (ISO 37001).<sup>99</sup> The International Organization for Standardization (ISO) issued ISO 37001:16 on October 14, 2016. ISO 37001:2016 “specifies requirements and provides guidance for establishing, implementing,

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92. [Revised Law Against Unfair Competition] (反不正当竞争法), (promulgated by Standing Comm. of the Nat’l People’s Cong., Nov. 4, 2017, effective Jan. 1, 2017), <http://www.chinalawtranslate.com/8879-2/?lang=EN> (last visited Feb. 7, 2018).

93. The Bribery Act, No. 47 (2016) KENYA GAZETTE SUPPLEMENT No. 197, [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/BriberyAct\\_47of2016.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/BriberyAct_47of2016.pdf).

94. *Id.* § 4.

95. *Id.* § 8(1).

96. *Id.* § 9.

97. Decreto por el que se expide la Ley General del Sistema Nacional Anticorrupción, Diario Oficial de la Federación [DOF] 18-07-2016 (Mex.), [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5445048&fecha=18/07/2016](http://www.dof.gob.mx/nota_detalle.php?codigo=5445048&fecha=18/07/2016).

98. Org. for Econ. Dev. [OECD], *Mexico’s National Anti-Corruption System - Statement from OECD Secretary-General Angel Gurría* (Aug. 1, 2016), <http://www.oecd.org/mexico/mexico-national-anti-corruption-system-statement-from-oecd-secretary-general.htm>.

99. *Peru to Become First LatAm Country to Implement Anti-Bribery System*, ANDINA (Mar. 31, 2017), <http://www.andina.com.pe/Ingles/noticia-peru-to-become-first-latam-country-to-implement-antibribery-system-661017.aspx>.

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maintaining, reviewing and improving an anti-bribery management system.”<sup>100</sup>

5. *Singapore*

On April 12, 2017, Singapore formally adopted and launched the Singapore Standard (SS) for ISO 37001.<sup>101</sup>

**III. Treaties and International Organizations**

A. TREATIES

1. *Council of Europe’s Criminal Law Convention on Corruption*

a. New Members

In May 2017, Germany ratified the Criminal Law Convention on Corruption and its Additional Protocol. They both became effective with respect to Germany on September 1, 2017.<sup>102</sup>

b. Reports and Announcements

In October 2017, Group of States Against Corruption (GRECO) published Report on Trends and Conclusions of Fourth Evaluation Round in the field of Corruption Prevention of MPs, Judges, and Prosecutors.<sup>103</sup> The report concludes that, in most jurisdictions, a solid foundation has been laid to tackle corruption among three categories of persons under the GRECO review.<sup>104</sup> The group pointed out, however, that there is overall lack of effective implementation.<sup>105</sup>

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100. INT’L STANDARDS ORG., ISO 37001:2016-Anti-Bribery Management Systems - Requirements with Guidance for Use (Oct. 2016), <https://www.iso.org/standard/65034.html>.

101. Andrew Martin & Weiyi Tan, *Singapore Adopts ISO 37001 Standard on Anti-Bribery Management Systems*, GLOB. COMPLIANCE NEWS (May 12, 2017), <https://globalcompliancenews.com/singapore-iso-37001-cms-20170512/>.

102. *Germany Ratifies the Criminal Law Convention on Corruption and its Additional Protocol*, Council of Eur. (May 10, 2017), [https://www.coe.int/en/web/greco/home/newsroom/-/asset\\_publisher/yxhkEPo3SNnS/content/germany-ratifies-the-criminal-law-convention-on-corruption-and-its-additional-protocol](https://www.coe.int/en/web/greco/home/newsroom/-/asset_publisher/yxhkEPo3SNnS/content/germany-ratifies-the-criminal-law-convention-on-corruption-and-its-additional-protocol).

103. Council of Eur., *Report on Trends and Conclusions of Fourth Evaluation Round in the Field of Corruption Prevention of MPs, Judges and Prosecutors*, (Oct. 2017), <https://rm.coe.int/rma/drl/objectId/09000016807638e7>.

104. *Id.*

105. *Id.*



2. *Organization for Economic Co-Operation and Development (OECD)*  
*Anti-Bribery Convention*

a. New Members

In July 2017, Lithuania<sup>106</sup> and Costa Rica<sup>107</sup> joined the OECD Anti-Bribery Convention, both in time for the Convention's 20th year anniversary. The two countries are, respectively, the forty-second and forty-third parties to the treaty.

b. Reports and Announcements

The OECD Working Group on Bribery released its first reports pursuant to Phase 4 of the peer-review monitoring process, issuing evaluations of the U.K.<sup>108</sup> and Finland<sup>109</sup> in March and the Czech Republic<sup>110</sup> in June. Phase 4 of the monitoring process, launched in March 2016, evaluates, among other things, challenges specific to and positive achievements by each member country.<sup>111</sup>

At the request of G20, the OECD issued a compendium of good practices on the use of open data for anti-corruption which: (1) discusses benefits of open data for greater public-sector transparency, performance, and trust; (2) highlights the importance of sustaining the implementation of an "open by default" approach to public sector information access; and (3) presents good practices on the publishing and reusing of open data for anti-corruption.<sup>112</sup>

The OECD marked the twentieth anniversary of the Anti-Bribery Convention with the release of its Study on the Detection of Foreign Bribery on December 12, 2017.<sup>113</sup>

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106. *Lithuania to Join the OECD Anti-Bribery Convention*, OECD (May 19, 2017), <http://www.oecd.org/corruption/lithuania-to-join-the-oecd-anti-bribery-convention.htm>.

107. *Costa Rica to Join the OECD Anti-Bribery Convention*, OECD (May 31, 2017), <http://www.oecd.org/corruption/costa-rica-to-join-the-oecd-anti-bribery-convention.htm>.

108. See Org. for Econ. Dev. [OECD], *Implementing the OECD Anti-Bribery Convention, Phase 4 Report: United Kingdom* (Mar. 23, 2017), <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf>.

109. See Org. for Econ. Dev. [OECD], *Implementing the OECD Anti-Bribery Convention, Phase 4 Report: Finland* (Mar. 23, 2017), <http://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf>.

110. See Org. for Econ. Dev. [OECD], *Implementing the OECD Anti-Bribery Convention, Phase 4 Report: Czech Republic* (June 22, 2017), <http://www.oecd.org/daf/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>.

111. *Phase 4 Country Monitoring of the OECD Anti-Bribery Convention*, OECD, <http://www.oecd.org/corruption/oecd-anti-bribery-convention-phase-4.htm> (last visited Jan. 31, 2017).

112. See Org. for Econ. Dev. [OECD], *Compendium of Good Practices on the Publication and Reuse of Open Data for Anti-Corruption Across G20 Countries: Towards Data-Driven Public Sector Integrity and Civic Auditing*, at 5 (Apr. 2017), <http://www.oecd.org/gov/digital-government/g20-oecd-compendium.pdf>.

113. Org. for Econ. Dev. [OECD], *The Detection of Foreign Bribery*, (Dec. 12, 2017), [www.oecd.org/corruption/the-detection-of-foreign-bribery.htm](http://www.oecd.org/corruption/the-detection-of-foreign-bribery.htm).

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3. *United Nations Convention Against Corruption*

In July 2017, Japan accepted the United Nations Convention Against Corruption (UNCAC); in October 2017, Niue acceded to it. Currently, there are 183 State Parties to the Convention.<sup>114</sup>

4. *OAS Inter-American Convention Against Corruption (IACAC)*

March 2017 marked the 21st anniversary of the Inter-American Convention Against Corruption (IACAC). As the chair of the Mechanism for Follow-up on the Implementation on the Inter-American Convention Against Corruption (MESICIC) Committee of Experts, Canada demonstrated its leadership and commitment to the anti-corruption mechanism by donating more than US \$500,000 in February to support OAS member states in the peer review process on the implementation of the IACAC.<sup>115</sup>

5. *African Union Convention on Preventing and Combating Corruption*

In January 2017, Egypt signed and ratified the African Union Convention on Preventing and Combating Corruption, becoming the thirty-eighth African state to do so.<sup>116</sup>

Additionally, the African Union has declared 2018 the year for combating corruption under the name “Winning the Fight Against Corruption: A Sustainable Path to Africa’s Transformation.”<sup>117</sup>

B. INTERNATIONAL ORGANIZATIONS

1. *African Development Bank (AfDB)*

In May 2017, the AfDB issued its Annual Report for the 2016 calendar year.<sup>118</sup> The report noted an increase in allegations of sanctionable practices—corruption, fraud, collusion, coercion, obstruction—from sixty-

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114. *U.N. Convention Against Corruption Signature and Ratification Status as of October 3, 2017*, U.N. OFFICE ON DRUGS AND CRIME (Oct. 3, 2017), <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (last visited Jan. 31, 2017).

115. Press Release, Government of Canada, Canada Supports Promotion of Human Rights and Sec. in the Americas: Strengthening of Legal Cooperation to Prevent, Prosecute, and Sanction Corruption in the Americas (June 20, 2017), [https://www.canada.ca/en/global-affairs/news/2017/06/backgrounder\\_-\\_canadasupportspromotionofhumanrightsandsecurityin.html](https://www.canada.ca/en/global-affairs/news/2017/06/backgrounder_-_canadasupportspromotionofhumanrightsandsecurityin.html).

116. Afr. Union, *List of Countries Which Have Signed, Ratified/Acceded to the African Union Convention on Preventing and Combating Corruption*, (Dec. 12, 2017), [https://au.int/sites/default/files/treaties/7786-sl-](https://au.int/sites/default/files/treaties/7786-sl-african_union_convention_on_preventing_and_combating_corruption_5.pdf)

[african\\_union\\_convention\\_on\\_preventing\\_and\\_combating\\_corruption\\_5.pdf](https://au.int/sites/default/files/treaties/7786-sl-african_union_convention_on_preventing_and_combating_corruption_5.pdf).

117. Liesl Louw-Vaudran, *The Fight Against Corruption in Africa is On*, INSTITUTE FOR SECURITY STUDIES (Aug. 18, 2017), <https://issafrica.org/iss-today/the-fight-against-corruption-in-africa-is-on>.

118. AFRICAN DEV. BANK GRP., AFRICAN DEV. BANK ANNUAL REPORT 2016, at 4 (2017), [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/AfDB\\_Annual\\_Report\\_2016\\_EN.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/AfDB_Annual_Report_2016_EN.pdf).

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six in the preceding year to eighty-six this year, as well as an increase in the number of cases which went to investigation phase, from thirty-eight in the preceding year to forty-one.<sup>119</sup>

2. *Asian Development Bank (ADB)*

The ADB Office of Anti-Corruption and Integrity published an Annual Report focusing on investigation, enforcement, and prevention. The publication highlights enforcement statistics on integrity violations—which include fraud, collusion, coercion, corruption, conflict of interests—and cross-debarment.<sup>120</sup>

Out of 120 new integrity violations investigated in 2016, only five percent were connected to corruption allegations. The report notes that the conversion rate for corruption complaints remains low, which is due to the inherent difficulty in demonstrating corruption.<sup>121</sup>

Pursuant to the Agreement for Mutual Enforcement of Debarment Decisions, ADB cross-debarred eighty-six firms and forty-seven individuals based on notifications received from three participating International Financial Institutions (IFIs). ADB, in turn, submitted ten firms and eight individuals for consideration of cross-debarment by participating IFIs.<sup>122</sup>

3. *World Bank Group*

The World Bank Group's Integrity Vice Presidency (INT) issued its 2017 Annual Update on the state of investigations and sanctions related to allegations of fraud and corruption. According to the report, which covers a period from July 1, 2016, to June 30, 2017, thirty-one of the sixty-three "external cases under investigation at the end of FY17 involved allegations of corruption."<sup>123</sup>

During the same period, the World Bank Group (WBG) sanctioned sixty entities and individuals found to be involved in misconduct (fraud, corruption, collusion, coercion, and obstruction) and honored eighty-four cross-debarments.<sup>124</sup> As an alternative settlement mechanism, INT entered into twenty-five Negotiated Resolution Agreements (NRAs), which can expedite the resolution of an ongoing investigation, incentivize companies to self-report, and in some cases provide for restitution.<sup>125</sup>

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119. *Id.*

120. ASIAN DEV. BANK, OFFICE OF ANTI-CORRUPTION AND INTEGRITY, OAI 2016 ANNUAL REPORT (2017), <https://www.adb.org/sites/default/files/institutional-document/234951/oai-annual-report-2016.pdf>.

121. *Id.* at 15.

122. *Id.* at 15–16.

123. WORLD BANK GRP., ANNUAL UPDATE FISCAL YEAR 2017: INTEGRITY VICE PRESIDENCY, at 6 (2017), <http://pubdocs.worldbank.org/en/703921507910218164/2017-INT-Annual-Update-FINAL-spreads.pdf>.

124. *Id.*

125. *Id.*

INT's Integrity Compliance Office (ICO) lifted debarments of thirteen companies after they implemented compliance programs, and at the end of FY17, "the ICO was actively engaged with 50 companies debarred by World Bank Group to assist them in developing compliance programs."<sup>126</sup> The efforts made by IOC and the entities in strengthening compliance demonstrate the growing emphasis the bank and its business partners place on corruption prevention.<sup>127</sup>

Two important Sanctions Board decisions rendered in FY17 sent a strong message about the WBG's right to protect its projects from fraud and corruption. "Two firms received 14-year debarments for multiple instances of misconduct including corruption, with their attempts to impede INT's investigations considered as an aggravating factor in one case and as a separate obstructive practice in the other."<sup>128</sup>

#### IV. Civil Society Efforts

##### A. TRANSPARENCY INTERNATIONAL

In January 2017, Transparency International (TI) released the latest version of its Corruption Perceptions Index (CPI).<sup>129</sup> The CPI is compiled based on expert opinions from around the world measuring the perceived levels of corruption in the public sector in 176 countries.<sup>130</sup> Each country is given a score from zero (very corrupt) to one hundred (highly clean). The findings from the report list 122 countries below a score of fifty, with the average global score being forty-three.<sup>131</sup> These findings indicate that less than a third of countries included are above the midpoint. Denmark ranked at the top of the index for the fifth year in a row, followed by New Zealand and Finland, which tied for second place, and South Sudan and Somalia were ranked at the bottom.<sup>132</sup>

In mid-November 2017, TI released the ninth addition of its Global Corruption Barometer, a report which reflects citizens' experience with corruption globally from March 2014 to January 2017.<sup>133</sup> More than 162,000 people in 119 countries were surveyed on issues such as how well governments were fighting corruption, which institutions were perceived as most corrupt, and the frequency with which people pay bribes to access

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126. *Id.* at 7.

127. *Id.*

128. *Id.*

129. TRANSPARENCY INT'L, CORRUPTION PERCEPTIONS INDEX 2016 (Jan. 25, 2017), [http://issuu.com/transparencyinternational/docs/2016\\_cpireport\\_en?e=2496456/43483458](http://issuu.com/transparencyinternational/docs/2016_cpireport_en?e=2496456/43483458).

130. *Id.* at 3.

131. *Id.* at 4–6.

132. *Id.*

133. TRANSPARENCY INT'L, GLOB. CORRUPTION BAROMETER, PEOPLE AND CORRUPTION: CITIZENS' VOICES FROM AROUND THE WORLD, at 3 (Nov. 14, 2017), [https://www.transparency.org/\\_view/publication/8064](https://www.transparency.org/_view/publication/8064) (to view, click "Download the report").

public services.<sup>134</sup> One in four surveyed reported paying a bribe for public services in the last twelve months.<sup>135</sup> Police and elected and other government officials were perceived to be most corrupt. Germany was perceived as having the least corrupt public institutions with just six percent of respondents believing that the public institutions were corrupt.<sup>136</sup> Conversely, in Moldova sixty-nine percent of respondents said that the public institutions were corrupt.<sup>137</sup>

#### B. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

The EITI has added one new member since 2016 and now includes fifty-two countries who have implemented the EITI standard.<sup>138</sup> This standard promotes transparency, accountability and good governance for oil, gas and mineral resources.<sup>139</sup> Participating countries are required to publish accurate information on key aspects of their natural resource management and the license allocation procedure.<sup>140</sup> The EITI impacts the 3.5 billion people who are living on countries rich in minerals, gas, and oil.<sup>141</sup>

In November 2017, the U.S. indicated that it would be leaving the EITI.<sup>142</sup> The reason given for the exit was that the domestic implementation of the EITI does not account fully for the legal framework of the U.S.<sup>143</sup> The U.S. government has stated that it remains committed to the principles of EITI and will continue to be a Supporting Country of the initiative rather than an Implementing Country.<sup>144</sup>

#### C. INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO)

In October 2016, the ISO 37001 Anti-Bribery Management Systems Standard was published. The standard lays out specific requirements and provides guidelines for the creation, implementation, upkeep, review, and improvement of an anti-bribery management system.<sup>145</sup> In 2017,

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134. *Id.* at 3–6.

135. *Id.* at 7.

136. *Id.* at 7.

137. *Id.*

138. *Fact Sheet: The Global Standard for the Good Governance of Oil, Gas, and Mineral Resources*, EXTRACTIVE INDUS.' TRANSPARENCY INITIATIVE (May 2017), [https://eiti.org/sites/default/files/documents/eiti\\_factsheet\\_en.pdf](https://eiti.org/sites/default/files/documents/eiti_factsheet_en.pdf).

139. *Id.*

140. *Id.*

141. *Id.*

142. Jennifer A. Dlouhy, *U.S. to Exit Global Anti-Corruption Effort Aimed at Oil Cash*, BLOOMBERG (Nov. 2, 2017), <https://www.bloomberg.com/news/articles/2017-11-02/u-s-to-exit-global-anti-corruption-effort-aimed-at-oil-money>.

143. Letter from Gregory J. Gould, Dir., U.S. Dep't of the Interior, to Fredrik Reinfeldt, Chair, Extractive Indus.' Transparency Initiative Bd., (November 2, 2017), [https://eiti.org/sites/default/files/documents/signed\\_eiti\\_withdraw\\_11-17.pdf](https://eiti.org/sites/default/files/documents/signed_eiti_withdraw_11-17.pdf).

144. *Id.*

145. INT'L STANDARDS ORG., *supra* note 64.

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organizations of varying size, public and private, have expressed an interest in the certification and a few have already achieved it.<sup>146</sup>

In China, Singapore, and Malaysia, to name a few, regional and “national standards bodies have localized the standard and are encouraging its use.”<sup>147</sup> Terna Group<sup>148</sup> and ENI SpA,<sup>149</sup> both based in Italy, were among the first companies to achieve certification for ISO 37001 in early 2017. French railway company Alstom,<sup>150</sup> EKVITA,<sup>151</sup> Robert Bosch Middle East<sup>152</sup>, and CPA Global<sup>153</sup> have also achieved certification. On the public sector side, this summer, the cities of Granby and Brossard in Quebec, Canada began the process of obtaining certification.<sup>154</sup>

**D. WORLD JUSTICE PROJECT**

This year the World Justice Project (WJP) released its Rule of Law Index.<sup>155</sup> In the 2016 WJP Rule of Law Index, Afghanistan was ranked third from the bottom and Pakistan was eighth from the bottom.<sup>156</sup> The World Justice Project also published country-specific reports this year which used

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146. Center for Responsible Enter. and Trade, *ISO 37001: A Year In Review*, CREATE.ORG (Nov. 15, 2017), <https://create.org/news/iso-37001-year-review/>.

147. *Id.*

148. *Fighting Corruption: Terna Obtains the First ISO 37001 Certification from IMQ*, TERNA GRP. (January 1, 2017), <https://webmagazine.terna.it/DisplayNews/tabid/1632/IdNotizia/4754/Default.aspx>.

149. Press Release, Eni, Eni Becomes the First Italian Co. to Obtain the ISO 37001:2016 “Antibribery Mgmt. Sys.” Certificate of Conformity for its Anti-Corruption Compliance Program (Jan. 25, 2017), [https://www.eni.com/en\\_IT/media/2017/01/eni-becomes-the-first-italian-company-to-obtain-the-iso-370012016-antibribery-management-systems-certificate-of-conformity-for-its-anti-corruption-compliance-program](https://www.eni.com/en_IT/media/2017/01/eni-becomes-the-first-italian-company-to-obtain-the-iso-370012016-antibribery-management-systems-certificate-of-conformity-for-its-anti-corruption-compliance-program).

150. Press Release, Alstom, Alstom Obtains ISO 37001 Certification for its Anti-Bribery Mgmt. Sys.z (June 2017), <http://www.alstom.com/press-centre/2017/06/alstom-obtains-iso-37001-certification-for-its-anti-bribery-management-system/>.

151. *ISO 37001: EKVITA Awarded ISO 37001 Certification on Anti-Bribery Management System*, ETHIC INTELLIGENCE (Aug. 18, 2017), <http://www.ethic-intelligence.com/press-release/20973-iso-37001-ekvita-awarded-iso-37001-certification-anti-bribery-management-system/>.

152. Press Release, Anna O'Leary, CPA Glob., *CPA Glob. Achieves ISO 37001 Anti-Bribery Certification*, (July 13, 2017), <https://www.cpaglobal.com/press-releases/cpa-global-achieves-iso-37001-anti-bribery-certification>.

153. Emirates News Agency, *UAE hands ISO 37001:2016 certification to Robert Bosch Middle East*, THOMSON REUTERS (June 10, 2017), [https://www.zawya.com/mena/en/story/UAE\\_hands\\_ISO\\_370012016\\_certification\\_to\\_Robert\\_Bosch\\_Middle\\_East-WAM20170610174104269/](https://www.zawya.com/mena/en/story/UAE_hands_ISO_370012016_certification_to_Robert_Bosch_Middle_East-WAM20170610174104269/).

154. Robert Plouffe, *Gros malaise dans l'industrie de l'anticorruption*, LE JOURNAL DE QUEBEC (Mar. 29, 2017), <http://www.journaldequebec.com/2017/08/29/dechirements-dans-lanticorruption>.

155. WORLD JUSTICE PROJECT, *WORLD JUSTICE PROJECT RULE OF LAW INDEX 2016* (2016), <https://worldjusticeproject.org/our-work/wjp-rule-law-index/previous-editions-wjp-rule-law-index>.

156. *Id.* at 21.

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survey data and address issues such as accountability, corruption, fundamental rights, crime, justice and the role of women.<sup>157</sup>

The WJP held their fifth World Justice Forum this July in The Hague.<sup>158</sup> This event is billed as the world's premier event for the rule of law.<sup>159</sup> The event was attended by over 300 participants from seventy-six countries,<sup>160</sup> with topics including the rule of law in a time of geopolitical change, combatting corruption, and criminal justice reform.<sup>161</sup>

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157. See, e.g., WORLD JUSTICE PROJECT, THE RULE OF LAW IN PAKISTAN: KEY FINDINGS FROM THE 2016 EXTENDED GENERAL POPULATION POLL & JUSTICE SECTOR SURVEY (2017), <https://worldjusticeproject.org/our-work/publications/country-reports/rule-law-pakistan>;

WORLD JUSTICE PROJECT, THE RULE OF LAW IN AFGHANISTAN: KEY FINDINGS FROM THE 2016 EXTENDED GENERAL POPULATION POLL & JUSTICE SECTOR (2017), <https://worldjusticeproject.org/our-work/publications/country-reports/rule-law-afghanistan>.

158. *World Justice Forum V: July 2017*, WORLD JUSTICE PROJECT (Dec. 20, 2017), <https://worldjusticeproject.org/news/world-justice-forum-v-july-2017>.

159. WORLD JUSTICE PROJECT, WORLD JUSTICE FORUM, <https://worldjusticeproject.org/our-work/engagement/events/world-justice-forum> (last visited Feb. 7, 2018).

160. *World Justice Forum V: The Hauge July 10-13, 2017*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/our-work/engagement/events/world-justice-forum/world-justice-forum-v>. (last visited Jan. 30, 2017).

161. *Agenda for #WJForum V: Day 2*, WORLD JUSTICE PROJECT (Jul. 11, 2017), <https://worldjusticeproject.org/our-work/engagement/events/world-justice-forum/world-justice-forum-v/wjforum-v-day-2>.

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