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

2021 年回顾：反腐败执法与合规最新趋势与发展

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What You Need to Know:
您需要了解的：

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

   美国司法部（下称"司法部"）及美国证券交易委员会（下称"证交会"）的态度表明，企业执法对于这两家机构而言都工作中的重中之重。但即使司法部的一位官员已经预示"未来一年将迎来一些重大结案"，这些工作重点如何转换为美国反腐败执法的实际行动仍有待观察。至少，我们预计，司法部和证交会将继续在反腐败调查和执法方面投入大量资源，我们还预计企业（尤其是曾有过刑事、民事、或行政结案史的企业）在结案时会被严查。司法部的政策变更还很有可能导致自愿披露、合作和整治行为再次受到重视，而对于累犯及非累犯而言潜在的认罪、较高的罚金及外部合规监察员等问题都悬而未决。最终，对于企业犯罪的严厉措辞会如何体现在反腐败执法中还需时间观察，但企业及其法律顾问应当为将来来自这两家机构的严峻考验做好准备。

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

   拜登政府已将防止腐败及反腐败执法列为关乎国家安全利益的工作重点，并制订了政府采取统一措施打击腐败的方法。因此，在新资源的支持下，美国国内监管机构面临着空前的自上而下的压力，需要推行严厉的反腐败执法计划。

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

   在过去的一年，政府执法风险不是企业在调查期间或结案后必须积极管理的唯一风险，有几家企业收到了据称腐败行为受害者及股东的民事索赔。

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

   过去一年，国际执法的结果因地而异，欧洲和亚洲取得了最大的成功。相反，拉丁美洲和非洲的执法部门继续面临各种挑战，包括资源问题和政治意愿问题。

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

   鉴于严厉执法的论调越来越明显，企业必须继续积极地投入资源，提升其合规计划，防止不当行为，为政府的严查做好准备。

Overview
概述

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

仅从统计数据来衡量，人们可能会认为美国政府将放缓反腐败执法的步伐。2021 年，只有四起反海外腐败法（下称“FCPA”）案件结案，证交会立案的新贿赂案件数创下十年来的新低，因此不算一个有破纪录和解金额或空前结案统计数据的年份。但看统计数据只不过是管中窥豹，司法部的一位高级官员近期预示“未来一年将迎来[反腐败方面的]重大结案”。从更广的层面而言，政府将努力扩大和刷新新调查的途径（近期在一次会议上被司法部一位高级官员形容为“强劲”），并以新的工具和更丰富的资源来武装自己，以打击企业不当行为。在司法部，副司法部长 Lisa Monaco 近期宣布的政策将白领犯罪执法放在了司法部工作重点清单的首位， 并且扩大了司法部在执法过程的每个阶段（从调查到结案再到之后）的权限和权力。司法部执法资源的急剧增加表明这些新的计划是动真格的。证交会方面，在公开声明中对其执法日程也一直持积极态度。虽然新冠疫情仍未完结，但执法官员表示，其传统工作环境的变化（包括远程工作）将不再影响执法力度。

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

最值得注意的一件事是，拜登政府突然发布了一系列新政策——包括拜登总统将反腐败指定为关乎国家安全利益的任务（下称“国家安全备忘录”），以及后续发布的长达 38 页的美国反腐败战略（下称“SCC”），该文件阐述了拜登政府纲领性的反腐败计划，直接针对打击企业犯罪和腐败，并明确其有意推行积极的执法计划。国际上，欧洲和亚洲也已推出加强的执法计划。虽然拉丁美洲和非洲的反腐败执法部门在过去一年面临各种挑战，但所有迹象表明美国执法人员在未来数年将把重点放在这两个区域。

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

总的来说，这些迹象都指向了同一个方向：司法部和证交会正加剧对于企业执法的关注和投入；美国执法行动中的结果可能变得更为严重，尤其对于曾有过刑事、民事、或行政结案史的企业。企业需要投入（或继续投入）资源稳健、有效及可衡量地改进其合规计划，包括通过评估企业现有合规计划的压力测试以确信其合规计划的有效性。

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

下面，我们将分析 2021 年美国及国际反腐败执法的主要趋势。此嵌有链接的表格概述了过去一年中的 FCPA 企业执法行动。

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

司法部（和证交会）发出推行积极和扩大范围执法计划的强烈信号，并以更丰富的政策工具支持调查和执法周期的各个方面

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

过去一年中，更集中在过去六个月中，随着副司法部长 Lisa Monaco 宣布的一系列政策变更，司法部表明了积极地在更大范围内调查和惩罚白领刑事犯罪者的态度。在政策层面，司法部在调查周期的各个阶段配备了新的政策工具，给企业，尤其是"累犯"企业（即曾有过刑事、民事、或行政结案史的企业），及个人加大压力，包括发现、调查不当行为；在进行的调查中要求加强合作；提高其在结案时的影响力；以及在和解后阶段对企业施加更多义务及更严格的审查。证交会主席 Gary Gensler 已表示，他将司法部的政策变更视为与其关于如何处理企业违法者的观点一致。

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

展望未来，执法战场的硝烟可能会越来越浓，即使关于反腐败执法活动的严厉措辞的具体效果还有待观察。但是，政府对企业犯罪所采取的严厉态度及新政策工具对企业在执法行动中可能获得的结果有多大影响很有可能在很大程度上取决于企业在调查及执法行动之前以及在调查和执法行动的全过程中对合规的投入有多大。企业现在就应该行动起来，加倍努力地制订和测试合规计划，以便其能以最佳的效果防止不法行为，并且在面临司法部和证交会调查时更好地为自己辩护。

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

发现调查目标：启动新案件，着重扩大调查目标范围

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

司法部已投入资源和工具，以便启动来自更广泛来源的更多刑事案件。正如司法部 FCPA 部门助理负责人近期指出的那样， 从司法部"如何"觉察出线索起始，司法部特别看重走出自己的部门，与其他（国内外）各级政府部门进行协调，从而更高效地发现不法行为。司法部另一位高级官员近期在一次会议上同样提到，检察官正利用新型调查手段对案件进行立案，该等新型手段包括"持续寻找方法利用来自各个政府部门的数据，以帮助我们确认[我们]需要重点关注的地方"，包括"FCPA 领域"。司法部做出上述努力的背景是：证交会 2021 年举报人计划收到的 FCPA 案件报告相比 2020 年猛增 25%，以及通过 2021 年总体计划达成创记录的支出后可能出现的举报数激增（超过以往所有年份之和）。

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

至于司法部针对的"目标"，尽管企业过去曾是司法部反腐败执法行动最显眼的目标，但若干其他目标可能会日益受到司法部的关注。首要的是，正如我们在近期一份客户期刊里讨论的，司法部官员已明确，从事或促成企业犯罪的个人违法者将是未来数年里的执法重点对象。如副司法部长所述，"司法部在企业刑事案件中的第一要务无疑是起诉从事企业不法行为并从中获利的个人。"另一名来自刑事司的司法部官员在美国律师协会的一个座谈会上强调了同样的观点，并补充说，同时起诉企业和个人有助于改善企业的合规及减少累犯。

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

除了追查*行贿*的个人和公司外，政府还继续对*收受*贿赂的官员采取执法行动，正如我们在去年和之前的客户期刊中所介绍的那样。例如，2021 年 5 月，司法部的 FCPA 部门指控三名美国人和两名玻利维亚高级政府官员涉嫌与武器合同有关的贿赂阴谋。同样，五人被指控贿赂委内瑞拉官员以获得与国有食品和药品分销计划的合同，其中包括收受贿赂并促成政府合同的前委内瑞拉州长。检察官在这些执法行动中运用了反洗钱（"AML"）法规，我们将在下面进一步讨论这一趋势。司法部可能很快就可以使用一种新工具，即立法将"贿赂的需求方"或收受贿赂定为刑事犯罪，6 月宣布的两党国会反对外国腐败和盗贼统治核心小组正在着手此事。加强对盗贼官僚的关注可以说是获得关于公司和其他个人的线索的有效手段，这重新提出了以腐败受贿者为中心的中心辐射式调查的概念。

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

除了针对行贿者和受贿者之外，司法部还在密切注意贿赂链中的其他参与者——特别是公司的守门人，如高管、董事、律师和审计师。例如，当时的纽约东区代理美国检察官表示，他的办公室"致力于起诉腐败的守门人，包括上市公司的高管和董事，他们……利用美国的金融系统犯罪。" 证交会官员认同这种方法，证交会执法部主任指出，守门人将"仍然是 [证交会] 执法部的重要关注点"，同时提到最近证交会针对公司律师和审计师采取的行动，以及证交会举报人计划据报道促成了对审计师和律师的调查。鉴于证交会对值得信赖的顾问的关注，企业明智的做法是对其当前的第三方尽职调查流程进行压力测试，并根据需要投入资源强化流程，同时认识到此类顾问可能会成为证交会更多关注的目标。

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

最后，司法部显然没有受到法庭对 FCPA 管辖范围的挑战的影响，继续提升其追究涉嫌腐败的行为人的能力，无论他们身在何处。今年，在司法部继审后无罪释放后的第二次上诉之后，第二巡回法院再次听取了美国政府诉 Hoskins 案的口头辩论（此前已于此文及此文中讨论过）。司法部仍认为，英国公民 Hoskins 作为一家美国公司的代理人受 FCPA 约束。 类似地，在联邦地区法院裁定瑞士公民和居民 Rafoi-Bleuler 不是美国公司的代理人后，以缺乏管辖权为由驳回了美国政府诉 Rafoi-Bleuler 案，司法部正在就该案的裁决向第五巡回上诉法院提出上诉。这些案件反映了基于代理人责任理论在 FCPA 检控中的重要性，以及未来几年关于管辖权的争论将可能继续在美国执法部门和辩护律师之间存在。

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

除了上述动态外，司法部继续在反腐败斗争中投入资源，承诺将“激增的”资源用于白领犯罪执法，并直接在刑事欺诈司内设立一个专门的联邦调查局小组，以便使“联邦探员和检察官在同一个战壕里战斗”。

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

正在接受调查：企业面临更大的合作期望，司法部可能会采取更积极的措施收集证据

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

司法部再次提高了希望获得合作奖励的公司的门槛。 这些提高的期望在耶茨备忘录中最初包含的某些合作要求的恢复中体现得最为明显，该备忘录是 2015 年的一份政策文件，其鼓励检察官追究应对公司不当行为负责的个人行为者，我们在之前的一份客户期刊中对此进行了介绍。更新的指南要求企业披露与涉嫌不当行为有关的*所有*个人的相关信息，以便获得合作奖励，这扭转了特朗普时代的一项政策修改，即当公司仅确定那些“实质性参与或对犯罪行为负责的人”时允许给予合作奖励。 ”

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

这一变化可能会在政府调查期间给企业带来额外的负担，同时也可能会减慢达成和解的速度。在 ACI 去年 12 月主办的 FCPA 大会之年度回顾小组开幕式全体会议（由科文顿主持）中谈及该政策的制定时，司法部 FCPA 部负责人解释说，这并不意味着企业必须"费尽九牛二虎之力"才能获得合作奖励。然而，他解释说，公司无法得知哪些人可能会引起司法部的兴趣或需要评估责任。换言之，应当由司法部——而不是企业及其律师——来确定哪些个人实质上参与了犯罪行为或对犯罪行为负责。归根结底，他建议——就像司法部的反叠加政策一样——企业不应该耍花招来保护个人免受审查。因此，在调查范围适当且有关个人的相关事实提供给司法部的情况下，被调查的企业应该完全能够获得合作奖励，而无需"费尽九牛二虎之力"。相比之下，试图过分缩小调查范围的企业和律师可能会因这一政策变化而遭到司法部的反对，并且要付出更大的代价才能获得合作奖励。

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

除了这些以政策为基础的举措之外，几年来，司法部一直在设法巩固其依赖直接对从调查目标或相关第三方处查获的更广泛来源材料的能力，其方式是依赖所谓的"滤网"或"污点"团队来进行保密特权筛选。这些努力一直是许多巡回法院正在进行的诉讼的主题，一些法院认识到，政府在评估其自身获取可能有助于刑事调查的潜在受特权保护材料的能力时显然存在固有的利益冲突。在最初遭遇法院挫折后，今年第十一巡回法院与其他巡回法院联手，支持使用滤网团队审查所查获材料的保密特权，但它为以后挑战滤网团队做出单方面保密特权的决定留下了可能性。在最近的法庭胜利之后，结合司法部积极的执法态度，我们将留意司法部是否会设法更多地依赖搜查令，就像在许多国际司法管辖区的情况一样。

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

结案结果：累犯的道路更加艰难，对涉嫌腐败行为提起指控的途径更宽

DOJ's newly announced policies specifically emphasize that DOJ intends to crack down on repeat corporate offenders, perhaps driven by a perception that some companies have treated non-prosecution agreements ("NPAs"), deferred prosecution agreements ("DPAs"), and plea agreements as the cost of doing business rather than as an opportunity to meaningfully improve their compliance cultures. But even beyond companies who have entered NPAs, DPAs, and plea agreements, as we covered in a previous alert, when considering whether to bring an enforcement action against corporations, DOJ prosecutors will now consider *all* of a corporation's prior misconduct, rather than just similar misconduct, in weighing whether to bring charges. Just how much misconduct is fair game remains an open question around the margins, however, as DOJ has not yet updated the Justice Manual (DOJ's internal policy guidelines) to spell out how the new approach will operate in practice.

司法部新宣布的政策专门强调了司法部有意打击屡教不改的企业违法者，这可能是因为一些企业将不起诉协议 (下称"NPA")、暂缓起诉协议 (下称"DPA") 和控辩协议视为经营成本，而不是切实改善其合规文化的机会。但是正如我们在之前的一份客户期刊中所述，即使对于已经达成不起诉协议、暂缓起诉协议、和认罪协议的企业之外的其他企业，在考虑是否对公司进行执法行动时，司法部检察官现在将考虑公司先前的所有不当行为，而不仅仅是类似的不当行为，以衡量是否提出指控。 然而，究竟有多少不当行为才会成为执法目标仍然是一个悬而未决的问题，因为司法部尚未更新《司法手册》（司法部的内部政策指南）以阐明新方法将如何在实践中运作。

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

司法部 FCPA 部负责人口头澄清说，该部门的指控分析将从以下方面着手：公司先前的不当行为的*完整*记录，或刑事、民事和监管不当行为的全部记录；在先前的执法行动中发现的行为；以及与司法部、州和海外执法行动相关的行为。在权衡公司先前不当行为的全部范围的相关性时，先前的不当行为与正受调查的不当行为的相似性仍然高度相关。司法部将考虑几个因素，包括不当行为的持续时间、严重性和普遍性、公司高级管理层是否参与其中，以及公司是否对不当行为进行了根本原因分析，并针对不当行为做出了相应的合规计划更改。即使考虑到这些因素，我们还是预计检察官将考虑比以前更广泛的企业不当行为，这可能给更多公司贴上"累犯"的标签，且导致更严厉的结案结果。

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

鉴于这一政策变化，企业需要准备好记载其不当行为和受到执法的全部历史，司法部 FCPA 部负责人警告说，如果企业无法做到，这将充分说明公司的合规文化。正如我们在最近的一篇文章中所讨论的，建议公司开始进行根本原因分析（如果尚未这么做的话）。此类做法本身有助于根据经验教训不断加强合规计划，正如司法部 的《企业合规计划评估》指南中所确定的那样，而且也有助于企业开始对过去的不当行为进行记载并就这种行为的不断改进建立记录。

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

除了侧重于加强执法结果的政策外，检察官还运用了扩大的法规库在导致反腐败执法行动的案件中对被告提出指控。正如我们在之前的一份客户期刊中预测的那样，司法部继续依靠 FCPA 以外的法定依据来起诉涉嫌腐败的行为。例如，在 10 月，瑞士信贷就司法部关于在共谋进行电汇欺诈的指控下的腐败和虚假披露指控达成和解，同时与证交会就 FCPA 会计条款下的指控达成和解。正如我们在另一份客户期刊中所述，最近对《银行保密法》和《反洗钱法》的修改可能会使这些法规成为反腐败执法更具吸引力的工具，对于可能超出 FCPA 管辖范围的案件尤其如此。或许是对进一步强调这些法规的预示，司法部的一位高级官员近期在一次会议上提到，关注 FCPA 执法案件的各方应当预计在不远的未来看到新型案件的出现。

Post-Resolution: Looking Increasingly Like a Prolonged Investigation

结案后：看起来越来越像一项长期调查

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

司法部对企业的严格审查不会在和解的那一刻停止。正如我们在之前的客户期刊中所述，新的司法部政策变化重新赋予该部门更大的自由度对企业实施外部合规监督作为结案的一部分，并且司法部已加紧努力，以监督对结案后义务的遵守情况。

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

司法部用于监控结案后合规性的关键工具之一是强制实施外部合规监察员制度，这种工具看起来现在似乎将被检察官更频繁地使用，以“鼓励和验证合规性”。 司法部最近的政策更新明确扭转了 2018 年 Benczkowski 备忘录中关于监察员制度在企业结案中不受欢迎的任何看法。司法部修订后的政策明确指出，关于适用监察员制度的决定将在很大程度上取决于司法部是否相信企业的合规基本制度是否能够自行发现和纠正未来的不当行为。在这方面，如果某个合规计划“在结案时经过测试、有效、资源充沛并得到充分实施”，则可能不需要委派监察员；如果某个合规计划“在结案时未经测试、无效、资源不足或没有完全实施”，情况可能正好相反。即使在司法部确定监察员制度不合适的情况下，司法部检察官也可能会施加更严格的合规报告义务，这在波音和瑞士信贷最近签订的 DPA 中（以及针对 FirstEnergy Corp. 和 Recology Inc.的国内腐败案件中）表现得非常明显。例如，波音的结案包含“更严格的公司合规报告”部分，要求每季度向司法部报告“关于其合规计划及内部控制、政策和程序的整改、实施和测试情况。”及早并真正投入资源到合规的企业（并且可以通过测试证明其有效性）不太可能看到司法部在和解谈判中诉诸这些措施。

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

除了委派监察员或加强合规报告义务之外，司法部已强烈表示将严格监管 DPA 和 NPA 的合规性。从这个意义上说，虽然一家公司以前可能会在结案后有短暂的喘息机会，但司法部已提醒企业注意，这段时间不得放松，仍应确保严格的合规工作。副司法部长在 10 月警告称，司法部将加强对 DPA 和 NPA 合规性的监管。从那时起，至少有两名司法部高级官员指出，已经通知几家公司其违反了结案协议，这"将给这些组织带来非常重大的风险"。这些官员可能指的是 NatWest，后者在 12 月承认了一项电汇欺诈罪和一项证券欺诈罪，并在司法部认定其违反 2017 年 NPA 后同意聘请一名独立的合规监察员，以及爱立信，其在最近几个月收到来自司法部的违规通知。鉴于这些事态发展，企业应将其仍受 DPA 和 NPA（以及控辩协议）约束的时期视为与正在接受调查期间存在的风险一样高的时期。特别是，此类企业应采取积极措施，不断提高合规计划的有效性，以降低司法部加强审查的风险，并在司法部发现违反结案协议条款的情况下做好准备。

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

更多变化即将到来，但司法部是否会通过添加大棒和移除胡萝卜的方式来引发意想不到的后果？

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

与司法部最近的政策变化一样引人注目的是，司法部警告说："展望未来，这是本届政府更有力地打击企业犯罪行动的开始，而不是结束。"在这方面，司法部正在组建一个企业犯罪咨询小组，该小组由来自司法部各部门的代表组成，他们将评估企业刑事执法中的一系列问题，并就司法部的政策提出修改建议。

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

在预测更激进的变化即将到来时，副司法部长暗示，新政策下，如果企业以前收到过 DPA 或 NPA，则可能会更难获得 DPA 或 NPA，即使之前结案的主体与争议事项无关。这一变化与长久以来的做法明显背离。处于受严格监管行业或过去有不当行为历史的企业不仅在解决问题时，而且在考虑是否进行自愿披露时，都可能面临截然不同的考虑。例如，如果 DPA 或 NPA 对累犯者完全不予考虑（或至少在没有自愿披露的情况下不予考虑），则某些企业在如何与司法部合作方面的决定将变得比以前更加复杂.

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

我们将密切关注司法部如何在其再次强硬的严厉打击企业犯罪立场（这给司法部带来更多的大棒）与其多年来鼓励企业自愿披露、充分配合司法部的调查和充分补救不当行为的做法之间达到平衡。当最近被问及更严厉执法结果的信号与鼓励公司自我报告不当行为之间可能存在的紧张关系时，司法部的 FCPA 部负责人说，与那些不进行自我披露的企业相比，自我披露的企业面临的执法结果会更好。然而，如果根据司法部政策某些利益被取消，企业可能会决定比以前更加重视自我披露的风险。

Invest, Invest, Invest in Compliance

对合规投入、投入、再投入

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

考虑到目前普遍的执法环境，很显然，企业必须持续投入以加强其合规计划，防止不当行为，并为可能和将要受到司法部和证交会的审查做好准备。 一位司法部高级官员在近期的一次采访中直言：“我想向合规人员重申 []，作为曾经站在他们立场的人，他们应该明白我的审查将非常严格……我想强调的是，如果您现在积极主动，并且为这些计划提供适当的资源……您的组织将获得丰厚的回报”。此番言论强化了副司法部长在其政策发布中针对企业发表的关键要点之一，即，“企业需要主动审阅其合规计划，以确保他们充分监测和整治不当行为，否则，他们必将付出代价”。

The White House is Spearheading a Whole-of-Government Focus on Anti-Corruption Compliance and Enforcement as a Core National Security Interest
白宫正在引领政府各个部门将反腐败合规和执法作为核心国家安全利益

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

在司法部发出加强执法信号的基础上，白宫正在推动采取政府各个部门参与的方式打击腐败。拜登总统已将反腐败确定为既是核心的国家安全利益——考虑到在实现国家安全目标方面可以投入的资源，这本身就值得注意——又是人道主义优先事项。 正如我们在此文和此文中所介绍的那样，该消息首先在政府 6 月的国家安全备忘录中出现，并在 12 月通过 SCC 得到加强。政府明确向在反腐败斗争中发挥作用的国内合作伙伴发出信号，要求他们必须表现出对腐败的强烈嗅觉，并向国际社会发出信号，即美国政府打算在全球范围内领导反腐败运动。

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

SCC 全文中有一个明确的信息，即将与在执法中发挥作用的国内外同行的协作与合作制度化，其并行目标是支持美国执法和促进国际执法计划。 正如我们在一份客户期刊中所讨论的，SCC 详细说明了一些侧重于与国际合作伙伴合作的战略目标，并特别指出了与这些合作伙伴合作建立互补机制以扩大美国反腐败力度的重要性。 尽管过去一年企业反腐败执法活动的程度有限，但在结案中的一个明确主题是国际协调，今年四分之三的执法行动提到与外国执法机构的合作，包括巴西、英国、印度、 瑞士和阿拉伯联合酋长国的执法机构。

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

除了呼吁加强国内和国际合作外，SCC 还预示将重点关注打击腐败的新工具。特别是，SCC 强调需要识别和解决金融系统中的漏洞，包括通过针对公司和个人的反洗钱执法，曝光洗钱和非法贩运在允许犯罪行为者"庇护其非法活动收益"方面所起的作用。" SCC 还宣布计划通过开发将潜在腐败实体与控制它们的个人联系起来的公共数据库来加强当前的 AML 执法框架。企业应利用这些资源来加强其反洗钱和反腐败合规计划。除了这些举措，如上所述，SCC 还考虑颁布法律，将"贿赂的需求方"定为刑事犯罪，并颁布重点针对那些有能力为洗钱者提供便利的人（"包括律师、会计师，以及信托和公司服务提供商。"）的新法律法规。

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

正如过去七个月里一系列声明所强调的那样，拜登政府在宣布其反腐败计划时，将重点放在了中美洲。正如我们在之前一份客户期刊中所述，6 月，司法部宣布了一项打击人口走私和贩运以及打击中美洲腐败的计划。该计划创建了多机构联合工作组 Alpha，以协调调查和执法资源，并寻求增加调查、起诉和资产追回，以打击墨西哥和北三角（萨尔瓦多、危地马拉和洪都拉斯）的腐败。紧随这一公告之后，国务院发布了恩格尔名单，其中确定了来自萨尔瓦多、危地马拉和洪都拉斯的 55 名个人，在国务院确定他们从事腐败或妨碍相关调查后这些人被禁止进入美国，我们在之前的一份客户期刊中讨论过。作为对这些努力的补充，司法部在 10 月宣布了一条专门的 FBI 热线，用于提供北三角地区"有关腐败相关犯罪和可能违反美国法律的信息"。

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

尽管我们尚未看到这些计划引发的执法行动，但鉴于政府对该地区的关注，如果采取积极措施评估当地腐败风险并审查其合规控制，在中美洲运营的公司将受益匪浅。 中美洲以外的公司也应该注意拜登政府的反腐败声明。 考虑到司法部和证交会积极的企业执法计划，企业在运营中应当假设未来几年会涉及对腐败行为的严格审查。

Government Enforcement is Not the Only Risk Stemming from Enforcement Activity
政府执法并非执法活动的唯一风险

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

去年的一些事态发展提醒我们，政府执法并不是发现自己受到政府关注的企业面临的唯一风险。在过去一年，一些企业受到涉嫌腐败行为受害者和股东的民事索赔。例如，爱立信在 2021 年宣布，其就一名前竞争对手提出的 9100 万美元索赔达成和解，该竞争对手声称其受到爱立信 2019 年与司法部和证交会达成的 FCPA 和解中所述的涉嫌腐败行为的损害。此外，Cognizant 于 2021 年披露，其与一类推定股东签订了一项价值 9500 万美元的和解协议，以解决与其 2019 年与证交会的 FCPA 和解有关的索赔。法律界人士意识到，企业在 FCPA 和解后面临股东诉讼或其他附带索赔的情况并不少见，此类诉讼通常取得有限的成功——例如 2021 年针对 VEON（前 Vimpelcom）和 MTS 的诉讼被驳回，这些诉讼起因于他们的 FCPA 和解。爱立信和 Cognizant 就这些诉讼达成和解的决定表明，企业必须主动管理可能源于政府调查本身以及与政府达成和解的附带风险。

Internationally, Some Regions Push Ahead with Robust Anti-Corruption Enforcement Agendas, While Others Struggle to Gain Traction
在国际上，一些地区推进强有力的反腐败执法议程，而另一些地区则努力获得支持

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

放眼美国境外，不同地区的执法趋势各不相同，一些地区在打击腐败行为的执法方面取得了巨大进步（欧洲和亚洲），而另一些地区则在反腐败执法计划方面继续面临挑战（拉丁美洲和非洲）。 然而，那些最难取得进展的地区，也是那些似乎可能会面临美国海外执法行动加强审查的地区。

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

过去一年，欧洲在推进其反腐败议程方面取得了最大的地区成功。 6 月欧盟检察官办公室（“EPPO”）成立，我们在之前的客户期刊中对此进行了预示。 EPPO 是一个独立机构，有权调查和起诉违反欧盟预算的犯罪，包括欺诈、洗钱、腐败和税收犯罪。 11 月，该办公室在针对前东斯洛文尼亚市长的诉讼中首次取得定罪结果，该市长承认为获得欧盟资金而伪造文件。正如我们在《钱伯斯》2022 年反腐败指南中提到的（连同英国其他方面的趋势），在国家层面，英国严重欺诈办公室（“SFO”）继续依靠 DPA 解决反腐败调查，并且总经济处罚继续上升。然而，与此同时，SFO 开展的调查较少，2021 年仅公开宣布了四项新调查。在法国，与英国一样，当局越来越依赖 CJIP，即法国的 DPA。例如，今年 2 月，法国法院批准了与 Bollore SE 达成的 1200 万欧元的 CJIP，该公司是一家在多哥被指控贿赂和欺诈的法国公司。在德国，一个新组建的联盟政府于 2021 年 12 月公布了其联盟协议，我们在此客户期刊中对此进行了讨论，这可能会重新启动长期讨论的在该国制定企业刑事责任法的计划。新政府将寻求在多大程度上推进先前的法律草案——其中包括对企业实施新的和更严厉制裁的提议、关于实施合规措施的法律法规以及内部调查的法律框架——仍有待观察。

In Asia, China remains the biggest focus area for anti-corruption investigations and enforcement. In September 2021, China's National Supervisory Commission ("NSC") released anti-corruption guidelines that signaled the country's increased attention to prosecuting those who offer bribes. These guidelines reflect the Chinese government's continuing efforts to integrate its ongoing anti-graft campaign into the country's expanding social credit system, which we covered previously. In terms of executing cross-border investigations in China, the country's new Data Security Law and Personal Information Protection Law introduce additional layers of complexity for collecting and processing data, as we discuss in detail here and here. As we covered previously, in South Korea, the Corruption Investigation Office for High-Ranking Officials (the "CIO") was established in January 2021. The CIO is an independent investigative agency authorized to investigate and prosecute certain crimes, including bribery and concealment of criminal proceeds, related to the duties of current and retired high-ranking officials, but the CIO's reach can extend to companies or individuals who are involved in such crimes. The CIO has initiated 24 investigations to date, but no prosecutions have been announced.

在亚洲，中国仍然是反腐败调查和执法的最大重点领域。 2021 年 9 月，中国国家监察委员会（“NSC”）发布了反腐败指导方针，表明该国更加重视起诉行贿者。这些指导方针反映了中国政府不断努力将其正在进行的反腐运动纳入我们之前介绍过的该国不断扩大的社会信用体系。关于在中国执行跨境调查方面，该国新的数据安全法和个人信息保护法为收集和处理数据带来了额外的复杂性，正如我们在此文和此文中详细讨论的那样。正如我们之前所介绍的，在韩国，高级公职人员腐败调查处（“CIO”）于 2021 年 1 月成立。CIO 是一个独立的调查机构，有权调查和起诉某些与现任和退休高级官员的职责有关的犯罪，包括贿赂和隐匿犯罪所得，但 CIO 的管辖范围可以扩展到参与此类犯罪的公司或个人。迄今为止，CIO 已启动 24 项调查，但尚未宣布任何起诉。

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

过去一年，另外两个地区——拉丁美洲和非洲——在推行反腐败执法计划方面面临更多挑战。拉丁美洲国家受到动荡的政治气候和新冠疫情大流行的影响，这些因素削弱了政府打击腐败的能力。随着公民和地方政府专注于解决紧迫的公共卫生优先事项，反腐败机构和司法机构的自主权和资源减少，导致执法活动整体减少。例如，在巴西，带头对 Odebrecht 和其他公司和个人进行腐败调查的洗车行动 (Lava Jato) 工作组于 2021 年 2 月解散，导致反腐败调查活动放缓。此外，在 2021 年，在“洗车行动”下获得的几项重要定罪被推翻。在非洲，一些司法管辖区（例如南非和安哥拉）的地方执法活动呈上升趋势，但我们尚未看到该地区有任何重大的企业执法行动。在其他地方，例如在尼日利亚和肯尼亚，最近改善反腐败执法的努力被广泛认为是失败的。

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

尽管拉丁美洲和非洲的地方执法面临挑战，但我们预计这两个地区将成为 2022 年及以后美国执法当局的战略重点。 如上所述，拜登政府已明确表示将重点放在打击和调查中美洲腐败上。 正如我们在最近的非洲报告中所讨论的，美国在非洲的重大执法活动仍在继续，SCC 发出了对非洲大陆更多关注的信号。

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

总而言之，企业可以预期多个地区的监管机构会进行不同程度的审查，作为对美国更严格执法环境的补充，同时，多国的执法部门将继续合作与共享信息。 建议企业从全球角度看待其反腐败合规计划，以确保计划能够响应区域风险、执法重点和发展，包括优先考虑深入的风险评估； 加强培训计划； 确保有效的内部调查、整治和根本原因分析； 并测试其合规计划的有效性。

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