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# **THE GUIDE TO CORPORATE CRISIS MANAGEMENT**

FIFTH EDITION

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## Publisher's Note

Latin Lawyer and LACCA are delighted to publish *The Guide to Corporate Crisis Management*. Edited by Sergio J Galvis, Robert J Giuffra Jr and Werner F Ahlers, partners at Sullivan & Cromwell LLP, the fifth edition of this guide brings together the knowledge and experience of leading practitioners from a variety of disciplines and provides guidance that will benefit all practitioners.

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

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

## CHAPTER 8

# Practical Considerations for Achieving Global Resolutions in Cross-Border Investigations

Kathleen S McArthur, Aisling O'Shea and Olivia G Chalos<sup>1</sup>

Government investigations present potentially significant risk to companies. In recent years, investigations have grown more complex, frequently scrutinising corporate activities across multiple jurisdictions. And as global enforcement initiatives have increased, so too have the number of authorities that may seek a seat at the table in investigating and potentially take enforcement action in connection with the same underlying facts. More recently, parallel investigations by multiple authorities in different jurisdictions have shown signs of increased collaboration and engagement among enforcement authorities, a trend that is expected to continue and increase. Given the severity of penalties that may be imposed and the impact on a company's business, such multilateral investigations can give rise to a true corporate crisis.

As enforcement authorities around the world increasingly collaborate, companies confronting a corporate crisis should anticipate the likelihood that they may face legal exposure in multiple jurisdictions. To navigate such situations effectively, companies need an effective strategy for efficiently coordinating fact-finding initiatives by multiple investigating authorities, as well as the company's response to those authorities. And, in circumstances where the company is incentivised to

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<sup>1</sup> Kathleen S McArthur and Aisling O'Shea are partners and Olivia G Chalos is an associate at Sullivan & Cromwell LLP. The authors wish to thank their colleague, Siobhan J Allen, an associate at Sullivan & Cromwell, for assisting in the research for the 2023 updates to this chapter.

pursue a resolution rather than to litigate, companies should consider the potentially significant strategic advantages of reaching a coordinated, global resolution with all relevant authorities – and, in some cases, with private litigants as well. Because multilateral settlement negotiations increase the complexity of resolution discussions significantly, companies need a thoughtful plan for identifying key objectives, finding common ground among the various authorities and ultimately laying the groundwork to land multiple planes at the same time.

This chapter is intended to provide a practical guide for companies in Latin America that may find themselves facing multilateral investigations. The first section outlines the recent trend towards multilateral investigations in the region, including the increased emphasis by relevant US authorities on collaboration with their non-US counterparts, and recent coordinated resolutions involving authorities in the United States and Latin America. The second section outlines some of the potential benefits to a global resolution that companies should consider when formulating their strategies for engaging with relevant authorities in a multilateral investigation. The final section discusses some of the practical considerations that companies should bear in mind, including critical early decisions that can lay the groundwork for coordination at later stages, as well as some of the circumstances that may weigh against pursuing a global resolution with all investigating authorities.

## **Trend towards multilateral investigations**

The increasing trend towards coordinated multilateral investigations in recent years is, in part, due to recognition of the strategic benefits of coordination among various jurisdictions, for both enforcement authorities and corporations subject to multiple investigations.

In the United States, both criminal and civil enforcement authorities have emphasised the importance they place on collaboration with their counterparts in other jurisdictions. In October 2023, US Acting Assistant Attorney General Nicole M Argentieri gave a speech affirming the commitment by the US Department of Justice (DOJ) to combating crime abroad.<sup>2</sup> In particular, she emphasised the importance of cooperation with the DOJ's international counterparts. Federal agencies have also used international whistle-blowers when combating corruption.

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2 U.S. Dep't of Justice (DOJ), Office of Public Affairs (OPA), Speech, 'Acting Assistant Attorney General Nicole M. Argentieri Delivers Remarks at the American Bar Association 10th Annual London White Collar Crime Institute' (10 October 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-american-bar>.

In 2022, both Mexico and Brazil were in the top six countries from which the US Securities and Exchange Commission (SEC) received the highest number of whistle-blower tips.<sup>3</sup> And in 2021, the SEC reported receiving approximately 169 whistle-blower tips from countries in Latin America.<sup>4</sup>

This continued emphasis on cross-border cooperation builds on an existing trend towards greater international collaboration in investigations by US criminal authorities; for example, in March 2023, the DOJ's Fraud Section reported:

*As the global leaders in the criminal enforcement of foreign bribery, our prosecutors routinely cooperate with international law enforcement partners to investigate and prosecute complex foreign bribery offenses that are committed by sophisticated actors across multiple jurisdictions throughout the world.*<sup>5</sup>

US authorities' commitment to cross-border cooperation in enforcement matters has extended beyond anti-corruption efforts. In November 2022, the SEC – the US agency with civil enforcement authority for violations of the country's securities laws as well as the Foreign Corrupt Practices Act (FCPA) – emphasised the importance of international cooperation in assisting the agency's enforcement objectives, stating:

*Enforcement cooperation is among the top priorities of the SEC's international program. Technological advances have facilitated the movement of capital across borders and increased opportunities for investors. This progress has also enhanced the ability of those who prey on investors to transfer assets abroad or base their scams and fraudulent activities overseas. As a consequence, international cooperation among securities regulators is vital to effective resolution of international enforcement investigations.*<sup>6</sup>

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3 U.S. Sec. & Exch. Comm'n (SEC), 'SEC Whistleblower Office Announces Results for FY 2022' (15 November 2022), [https://www.sec.gov/files/2022\\_ow\\_ar.pdf](https://www.sec.gov/files/2022_ow_ar.pdf).

4 SEC, '2021 Annual Report to Congress: Whistleblower Program', at 38–39, <https://www.sec.gov/files/owb-2021-annual-report.pdf>.

5 DOJ, Criminal Div., Fraud Section, 'Fraud Section: Year in Review 2022', at 10, <https://www.justice.gov/criminal-fraud/file/1568606/download>.

6 SEC, 'International Enforcement Assistance' (4 November 2022), <https://www.sec.gov/about/offices/oia/oia-crossborder>.

Other civil enforcement authorities in the United States have similarly made strides in enhancing their cooperative enforcement programmes. In 2020, the Commodity Futures Trading Commission (CFTC) – the US agency with principal oversight of derivatives markets and the enforcement authority for fraud and manipulation in connection with transactions in physical commodities – published an Enforcement Manual formalising and centralising the procedures its staff must follow when seeking to obtain evidence from foreign sources.<sup>7</sup> The Enforcement Manual emphasises that one of its cornerstones is '[w]orking cooperatively and in parallel with criminal authorities and other federal, state, or international regulators'.<sup>8</sup> As a result, the CFTC's Division of Enforcement cooperates with its domestic and foreign counterparts in a variety of ways, including through a 'robust referral process, information sharing, providing technical assistance and subject matter training, and at times, working on parallel investigations'.<sup>9</sup>

US criminal authorities frequently rely on mutual legal assistance treaties (MLATs) entered into between the United States and other jurisdictions, which generally allow for the exchange of evidence and information in criminal and related matters. The United States has entered into MLATs with a number of countries in Latin America, including Argentina, Belize, Brazil, Mexico, Uruguay and Venezuela.<sup>10</sup> In the civil context, a number of US authorities – including both the SEC and the CFTC – have entered into various memoranda of understanding that facilitate mutual assistance between the US civil agencies and their counterparts in other jurisdictions. As of October 2023, the SEC has entered into such arrangements with authorities in a number of Latin American countries, including Argentina (the National Securities Commission (CNV)), Brazil (the Securities and Exchange Commission (CVM)), Chile (the Supervision of Securities and Insurance (SVS)) and Mexico (the National Banking and Securities Commission

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7 Commodity Futures Trading Comm'n (CFTC), Division of Enforcement, Enforcement Manual (20 May 2020), <https://www.cftc.gov/sites/default/files/2021-05/EnforcementManual.pdf>.

8 *id.* at 36.

9 *ibid.*

10 DOJ, 'Mutual Legal Assistance Treaties of the United States' (April 2022), <https://www.justice.gov/criminal-oia/file/1498806/download>.



(CNBV)).<sup>11</sup> The CFTC has entered into cooperative enforcement arrangements with authorities in more than 20 jurisdictions, including Argentina (CNV), Brazil (CVM) and Mexico (CNBV).<sup>12</sup> This increased focus on international cooperation has had meaningful and visible results in the enforcement landscape.

Cross-border enforcement and cooperation between authorities in the United States and Brazil grew tremendously in the aftermath of Operation Car Wash (*Lava Jato*) and the Odebrecht corruption scandal, and coordinated anti-corruption resolutions involving US and Brazilian authorities, as well as other authorities in the region, have continued; for example, on 20 April 2022, the SEC announced charges against Stericycle in respect of an alleged scheme to pay bribes to officials in Brazil, Mexico and Argentina in exchange for obtaining and retaining business advantages in connection with providing waste management

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- 11 SEC, 'Cooperative Arrangements with Foreign Regulators', <https://www.sec.gov/about/offices/oia/oia-cooparrangements>; 'Memorandum of Understanding Between the United States Securities and Exchange Commission and the Comisión Nacional de Valores of Argentina on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information' (9 December 1991), [https://www.sec.gov/about/offices/oia/oia\\_bilateral/argentina.pdf](https://www.sec.gov/about/offices/oia/oia_bilateral/argentina.pdf); 'Memorandum of Understanding Between the United States Securities and Exchange Commission and the Comissão de Valores of Brazil' (1 July 1988), [https://www.sec.gov/about/offices/oia/oia\\_bilateral/brazil.pdf](https://www.sec.gov/about/offices/oia/oia_bilateral/brazil.pdf); 'Memorandum of Understanding Between the United States Securities and Exchange Commission and the Superintendencia de Valores y Seguros of Chile on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information' (3 June 1993), [https://www.sec.gov/about/offices/oia/oia\\_bilateral/chile.pdf](https://www.sec.gov/about/offices/oia/oia_bilateral/chile.pdf); 'Memorandum of Understanding Between the United States Securities and Exchange Commission and the Comisión Nacional De Valores of Mexico on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information' (18 October 1990), [https://www.sec.gov/about/offices/oia/oia\\_bilateral/mexico.pdf](https://www.sec.gov/about/offices/oia/oia_bilateral/mexico.pdf).
- 12 See CFTC, 'Memoranda of Understanding', <https://www.cftc.gov/International/MemorandaofUnderstanding/index.htm>. See also 'Memorandum of Understanding Between the United States Commodity Futures Trading Commission and the Comisión Nacional de Valores of Argentina on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information' (30 May 1995), <https://www.cftc.gov/idc/groups/public/%40internationalaffairs/documents/file/acnv95.pdf>; 'Memorandum of Understanding Between the United States Commodity Futures Trading Commission and the Brazil Comissão de Valores Mobiliários on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information' (12 April 1991), <https://www.cftc.gov/idc/groups/public/%40internationalaffairs/documents/file/bcvm91.pdf>; 'Memorandum of Undersfanding Between the Comisión Nacional Bancaria y de Valores of the United Mexican States and the United States Commodity Futures Trading Commission on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information' (11 May 1995), <https://www.cftc.gov/idc/groups/public/%40internationalaffairs/documents/file/mcnbv95.pdf>.

services.<sup>13</sup> Stericycle agreed to resolve related investigations with the SEC for approximately US\$28 million, and investigations in Brazil by the Comptroller General of the Union (CGU) and the Attorney General's Office (AGU) for approximately US\$9.3 million.<sup>14</sup> Similarly, in May 2022, Glencore pleaded guilty to bribery-related charges brought by the US DOJ and the Brazilian Federal Public Ministry (MPF), among others,<sup>15</sup> and simultaneously resolved parallel civil charges brought by the CFTC for related violations of the Commodity Exchange Act.<sup>16</sup> Similarly, on 19 December 2022, Honeywell UOP agreed to pay more than US\$160 million to resolve parallel bribery investigations in the United States and Brazil.<sup>17</sup> The Federal Bureau of Investigation and the Internal Revenue Service investigated the case with assistance from the DOJ's Office of Internal Affairs and the MPF, CGU and AGU in Brazil.<sup>18</sup>

Enforcement coordination between the United States and Latin America does not end in Brazil. In 2022, more than 60 per cent of the DOJ's FCPA enforcement actions and more than two-thirds of FCPA-related prosecutions involving individuals had connections with Latin America.<sup>19</sup> It was also the region most frequently implicated in FCPA bribery schemes in 2022.<sup>20</sup>

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

14 *ibid.*

15 DOJ, OPA, Press release, 'Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes' (24 May 2022), <https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes>.

16 CFTC, Press release, 'CFTC Orders Glencore to Pay \$1.186 Billion for Manipulation and Corruption' (24 May 2022), <https://www.cftc.gov/PressRoom/PressReleases/8534-22>. Although the CFTC does not have authority to enforce the Foreign Corrupt Practices Act (FCPA), the agency has brought a number of parallel actions in cases that alleged corrupt payments designed to give companies improper access to non-public information relating to physical commodities supply, demand or transactions.

17 DOJ, OPA, Press release, 'Honeywell UOP to Pay Over \$160 Million to Resolve Foreign Bribery Investigations in U.S. and Brazil' (19 December 2022), <https://www.justice.gov/opa/pr/honeywell-uop-pay-over-160-million-resolve-foreign-bribery-investigations-us-and-brazil>.

18 *ibid.*

19 Stanford Law School, Foreign Corrupt Practices Act Clearinghouse, '2022 FCPA Year in Review', <https://fcpa.stanford.edu/fcpac-reports/2022-fcpa-year-in-review.pdf>; see, e.g., DOJ, OPA, Press release, 'Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations' (10 August 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>.

20 *ibid.*

The trend towards coordinated multilateral investigations and parallel enforcement is expected to continue, as enforcement authorities in the United States and Latin America deepen their relationships with one another. This overall trend may be bolstered even further by increased activity from whistle-blowers in Latin America. US regulators – including the SEC and the CFTC – provide significant incentives to whistle-blowers; individuals who report wrongdoing or provide tips that ultimately lead to successful enforcement actions may receive between 10 per cent and 30 per cent of the amount of monetary sanctions collected in certain agency enforcement actions. This can include whistle-blowers based outside the United States.<sup>21</sup>

### **Potential benefits of a global resolution**

There is no universal road map for effective management of a corporate crisis. Part of what differentiates a true corporate crisis from ordinary litigation or enforcement risk is the sweeping and sometimes unprecedented nature of the company's exposure. In certain circumstances, being prepared to litigate a matter to conclusion – including, in some instances, against the government – can be critical to achieving an optimal outcome. But not every case is one that can or should be tried, and a negotiated resolution is frequently an effective way to manage corporate criminal and regulatory exposure. For companies facing a potentially significant corporate resolution, a global resolution with all interested authorities may offer substantial benefits.

### **Finality**

One principal benefit of a global resolution is the finality it confers. Cross-border investigations present a host of challenges, and a global resolution brings certainty for stakeholders about the scope of a resolution and permits companies to begin to move forward constructively from a corporate crisis.

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21 See, e.g., CFTC, Press release No. 8239-20, 'CFTC Awards Domestic and International Whistleblowers' (11 September 2020) (announcing that an overseas whistle-blower would receive an award), <https://www.cftc.gov/PressRoom/PressReleases/8239-20>.

## Consistent messaging

Coordinated announcements of resolutions across jurisdictions also permits consistent messaging globally. For firms operating in a global operating environment, this sort of consistency can be critical to achieving their strategic objectives. In addition, in a world of 24-hour news cycles, finality and consistency in messaging can help to minimise the overall duration of public relations impact resulting from the resolutions.

## Harmonisation of resolution documents and post-resolution obligations

A global resolution may allow for the harmonisation of resolution documents, providing a consistent and cohesive narrative across jurisdictions. Particularly in circumstances where a company will make admissions in a government resolution that create risk for follow-on civil litigation, harmonisation of the statements of facts can reduce post-resolution litigation risk.

Harmonisation may also extend to the coordination of post-resolution obligations (e.g., continuing compliance obligations, the implementation of an independent compliance monitor, remediation efforts and other continued reporting requirements). Companies entering into corporate criminal resolutions – and even some civil regulatory resolutions – in the United States typically will have post-resolution obligations that continue for years after an agreement is reached. These obligations may include commitments to cooperate in providing documents and testimony in connection with authorities' prosecution efforts in related cases, as well as obligations to disclose to the government evidence or allegations of additional violations of law within the company. In addition, companies may be required to take specific remedial steps, prepare reports regarding the progress of their remediation or retain an independent compliance monitor to oversee the enhancement of the company's compliance programme.<sup>22</sup> The operational burden and legal expense of complying with these post-resolution obligations can be substantial. Negotiating a coordinated, global resolution with relevant authorities can allow for the harmonisation of these post-resolution obligations and reduce post-resolution burdens accordingly.

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22 DOJ, Criminal Div., 'Evaluation of Corporate Compliance Programs' (March 2023), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

## Crediting and offsets of penalties

Increasingly, authorities in both the United States and elsewhere have shown a willingness to credit amounts paid to other authorities against the penalties that would otherwise be imposed in a corporate resolution. In May 2018, the DOJ announced its Policy on Coordination of Corporate Resolution Penalties, which instructs DOJ components to coordinate with one another and with other federal, state, local and foreign enforcement agencies in imposing multiple penalties on a company for investigations of the same misconduct.<sup>23</sup> The policy was designed to discourage disproportionate enforcement by alleviating overlapping demands that multiple investigations can place on corporations and ‘the unnecessary imposition of duplicative fines, penalties and/or forfeiture against the company’.<sup>24</sup> Other US authorities have adopted similar practices.<sup>25</sup> The financial consequences of these offsets can be substantial; for example, in a coordinated resolution announced in August 2023 relating to FCPA bribery charges, the DOJ agreed to credit up to half of a company’s criminal penalty – US\$20.3 million – against any amounts paid by the company and its subsidiary to Colombia’s Superintendence of Industry and Commerce (SIC) for violations of Colombian laws in respect of the same conduct, as long as the company and its subsidiary dropped their appeals against SIC’s resolution.<sup>26</sup>

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

24 *ibid.*

25 See, e.g., Memorandum from James McDonald, Director, CFTC Div. of Enf’t, to CFTC Div. of Enf’t Staff, ‘Civil Monetary Penalty Guidance’ (20 May 2020), <https://www.cftc.gov/media/3896/EnfPenaltyGuidance052020/download> (listing as one of the factors staff are required to consider when making staff recommendations to the Commission regarding an appropriate civil monetary penalty in a particular matter, ‘[t]he total mix of remedies and monetary relief to be imposed on the Respondent in the recommended Commission enforcement action, in addition to the remedies and relief to be imposed in parallel cases involving criminal authorities . . . other regulatory entities, or self-regulatory organizations’).

26 See, e.g., DOJ, OPA, Press release, ‘Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations’ (10 August 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations>.

## Practical considerations for achieving a global resolution

Although the potential benefits of reaching a global resolution are clear, the practical path to getting there is no small feat. Laying the necessary groundwork for a global resolution often begins at an early stage of an investigation, often before the company has a clear picture of its potential exposure. Outlined below are some of the key practical steps companies should consider.

### Coordinated fact-finding and reporting

The groundwork for a global resolution starts early. To reach a coordinated outcome, authorities need to operate from a common understanding of relevant facts. As a result, companies should consider actively engaging with investigating authorities to coordinate the early fact-finding stages of an investigation. This requires effective communication not only with relevant investigating authorities but also internally and among the company's counsel in each of the relevant jurisdictions.

Companies often find that making early efforts to coordinate fact-finding across jurisdictions has its own benefits, even in matters that do not conclude in a global resolution. One of the many challenges of multilateral investigations is that authorities in different jurisdictions may have conflicting investigative requests or practices. As one example, companies often seek to cooperate with both criminal and civil enforcement authorities by disclosing all facts learned by the company in its own investigation.<sup>27</sup> Full cooperation can confer meaningful benefits, but companies may be stymied in their efforts to conduct an effective internal investigation by conflicting requests from other authorities to avoid interviewing relevant personnel; for example, when there is a risk of tipping off a potential target of an investigation. In other circumstances, there may be conflicts of laws that must be addressed; for example, responding to one authority's requests that may implicate data privacy or other legal regimes in another jurisdiction. Furthermore, in the absence of coordination, multilateral investigations may lead to *seriatim*, overlapping requests that introduce inefficiencies and an increased burden on responding companies. Efforts to coordinate the scope and sequence of investigations across jurisdictions can help to reduce the number and significance of such conflicts.

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27 See DOJ, Justice Manual, § 9-47.120: Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (January 2023), <https://www.justice.gov/criminal-fraud/file/1562831/download>; CFTC, Div of Enf't, Enforcement Manual, § 8: Cooperative Enforcement (20 May 2020), <https://www.cftc.gov/sites/default/files/2021-05/EnforcementManual.pdf>.

Notwithstanding the increased trend among enforcement authorities towards cross-border information-sharing, the particular circumstances of a given matter may limit the extent of information-sharing by investigating authorities. As a result, companies that may wish to secure a global resolution should be proactive in their own investigations and disclosures to relevant authorities to ensure the development of a common factual record across jurisdictions. The DOJ has expressed its view on the importance of complete factual disclosures in matters involving multiple jurisdictions:

*We are committed to rooting out and punishing corporate offenders, including through coordinated investigations and resolutions that fully vindicate the public interest. The Department also recognizes the value of corporate voluntary disclosures of misconduct and cooperation by responsible corporate actors. In appropriate cases, coordination and balancing of corporate resolution penalties furthers those aims.*<sup>28</sup>

### Timing

Each relevant authority may have a different timetable for completing its investigation and very different practices with respect to the time frame for negotiating resolutions. As a result, companies should give careful consideration to when and how they introduce negotiations with relevant authorities regarding the prospect for a global resolution and coordinated timetable. Depending on the particular circumstances of a matter, achieving a coordinated timetable for resolution may require companies to speed up their fact-finding investigations in areas that are specific to a particular authority, or to seek delayed action by an authority that completed its processes early. Companies should be prepared to remain nimble and provide as much advance notice as possible about their own internal timetables.

### Consider potential trade-offs

Even as companies are laying the groundwork for a potential global resolution, they should continue to consider the potential trade-offs that coordination across jurisdictions may entail; for example, in some instances, the timing requirements of one investigating authority may jeopardise the company's ability to fully explore and present on jurisdiction-specific defences relevant only to certain other authorities. Companies also should recognise that prioritising a global resolution in their negotiation strategy will mean that other potential 'asks' may need to be

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<sup>28</sup> id. § 1-12.100: Coordination of Corporate Resolution Penalties in Parallel and/or Joint Investigations and Proceedings Arising from the Same Misconduct, *supra* note 23.

deprioritised. Particularly where there is a meaningful disconnect in the desired time frames of relevant authorities, moving everyone to the finish line at the same time can require trade-offs in other aspects of the negotiation. The effects of these trade-offs can sometimes be mitigated where companies have succeeded in keeping all investigating authorities on an equal footing as to the development of the factual record, and the desire for a coordinated resolution has been made clear at an early stage.

## **Conclusion**

For companies confronted with a significant, cross-border investigation, reaching a coordinated, global resolution with all relevant authorities – and, in some cases, with private litigants – often may be the best available outcome. Such resolutions provide regulatory certainty to a company, its investors and the public, and facilitate a globally consistent communications strategy focused on positive steps by the company in moving forward from the crisis. It is important, therefore, to engage skilled counsel in assisting with efforts to reach a global resolution that will mitigate a company's future litigation exposure and best achieve a company's long-term objectives.