

 **LATIN LAWYER**

# **THE GUIDE TO CORPORATE CRISIS MANAGEMENT**

FOURTH EDITION

**Editors**

Sergio J Galvis, Robert J Giuffra Jr and Werner F Ahlers

# **The Guide to Corporate Crisis Management**

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Fourth Edition

**Editors**

**Sergio J Galvis, Robert J Giuffra Jr  
and Werner F Ahlers**

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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, this new 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.

# Contents

## Introduction: Effective Crisis Management in Latin America ..... 1

Sergio J Galvis, Robert J Giuffra Jr and Werner F Ahlers

*Sullivan & Cromwell LLP*

### **PART I: LESSONS FROM THE COVID-19 CRISIS**

## 1 Managing the Covid-19 Pandemic and its Consequences in Brazil: Issues and Recommendations for Directors and Officers ... 11

Cleber Venditti, Paula Indalecio and Thiago Jabor Pinheiro

*Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados*

## 2 Covid-19 and the Impact on Corporate Governance and Compliance in Colombia ..... 25

Jaime Herrera Rodriguez and Oscar Tutasaura Castellanos

*Posse Herrera Ruiz*

### **PART II: NAVIGATING POLITICAL AND COUNTRY RISKS**

## 3 Dealing with the Challenges of Political Violence and Crime in Latin America ..... 39

Jack Devine and Amanda Mattingly

*The Arkin Group LLC*

## 4 Argentina: A Legal Toolbox for an Unprecedented Crisis..... 55

Mariela I Melhem, Esteban Valansi and Siro P Astolfi

*Mitrani Caballero & Ruiz Moreno Abogados*

**5 Navigating a Corporate Crisis: Managing the Risks of Downsizing in Venezuela..... 72**

Fulvio Italiani and Carlos Omaña  
*D'Empaire*

**6 M&A in a Crisis-Prone Environment: Red Flags and Warning Signs in Peru ..... 79**

José Antonio Payet and Carlos A Patrón  
*Payet, Rey, Cauvi, Pérez Abogados*

**PART III: STAKEHOLDER RELATIONS**

**7 Singing from the Same Song Sheet: How Collaboration Between Legal and Communications Can Mitigate a Crisis ..... 93**

Paul A Holmes and Eric M Wachter  
*Finsbury Glover Hering*

**8 Crisis Mode: Have Your ESG Team on Speed Dial..... 106**

Pablo Jiménez-Zorrilla and Luis Burgueño  
*Von Wobeser y Sierra, SC*

**9 Crisis Management as a Tool for Approaching Shareholder Activism ..... 119**

Sergio J Galvis and Werner F Ahlers  
*Sullivan & Cromwell LLP*

**10 Data Privacy and Cybersecurity: Crisis Avoidance and Management Strategies ..... 133**

Jeremy Feigelson, Andrew M Levine, Johanna Skrzypczyk,  
H Jacqueline Brehmer, Mengyi Xu, Hilary Davidson and Michael Bloom  
*Debevoise & Plimpton LLP*

11 **Never Let a Good Crisis Go to Waste: The Role of Culture, Perception and Common Sense in Crisis Management** ..... 170  
 Pablo Jiménez-Zorrilla *Von Wobeser y Sierra, SC*  
 Gregorio Lascano *Globant*

12 **Mining Projects in Peru: Community Relations, Indigenous Rights and the Search for Sustainability** ..... 182  
 Luis Carlos Rodrigo Prado  
*Rodrigo, Elías & Medrano Abogados*

**PART IV: ANTI-CORRUPTION AND GOVERNMENT INVESTIGATIONS**

13 **New US Enforcement Priorities and Their Impact on Latin American Companies** ..... 197  
 Francesca Odell, Jonathan Kolodner and Lisa Vicens  
*Cleary Gottlieb Steen & Hamilton LLP*

14 **Practical Considerations for Achieving Global Resolutions in Cross-Border Investigations**..... 216  
 Kathleen S McArthur, Aisling O'Shea and Olivia G Chalos  
*Sullivan & Cromwell LLP*

15 **When Good Companies get Caught Up in the Fight – A Practical Crisis Management Guide for Doing Business in Mexico** ..... 228  
 Leonel Pereznieto  
*Creel, García-Cuéllar, Aiza y Enriquez*

16 **Anti-Corruption in Latin America** ..... 241  
 James M Koukios, Ruti Smithline, Gerardo Gomez Galvis and Maria Acosta  
*Morrison & Foerster LLP*

17 **Representing Individual Executives in Latin America**..... 261  
 Mauricio A España and Andrew J Levander  
*Dechert LLP*

**PART V: RESTRUCTURING AND INSOLVENCY**

**18 Weathering a Crisis in Brazil: Fiduciary Duties of Directors and Officers of Brazilian Companies Approaching Insolvency ..... 277**  
Giuliano Colombo and João Guilherme Thiesi da Silva  
*Pinheiro Neto Advogados*

**19 Financial Distress: An Action Plan for Corporate Restructurings in Mexico..... 291**  
Eugenio Sepúlveda  
*Galicia Abogados*

**20 United States Bankruptcy Proceedings for Latin American Corporates ..... 305**  
Andrew G Dietderich, James L Bromley and Fabio Weinberg Crocco  
*Sullivan & Cromwell LLP*

**About the Authors ..... 315**

**Contributing Law Firms' Contact Details ..... 337**

# Part IV

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## Anti-corruption and Government Investigations

## CHAPTER 14

# 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 pursue a resolution rather than litigate, companies should consider the potentially significant strategic advantages of reaching a coordinated, global

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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.

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 toward 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 US and Latin America. The second section outlines some of the potential benefits to a global resolution, which 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**

In recent years, there has been an increased trend towards coordinated multilateral investigations, in part due to recognition of the strategic benefits of coordination among various jurisdictions, both for enforcement authorities and corporations subject to multiple investigations.

In the United States, both criminal and civil enforcement authorities have recently emphasised the importance they place on collaboration with their enforcement counterparts in other jurisdictions. Earlier this year, US President Joseph R Biden issued a memorandum establishing countering corruption as a core US national security interest. In so doing, he directed senior officials to conduct an interagency review process designed to significantly bolster, among other things, the country's ability to 'work with international partners to counteract strategic

corruption' and 'enhance efforts to quickly and flexibly increase United States and partner resources of investigative, financial, technical, political, and other assistance to foreign countries that exhibit the desire to reduce corruption'.<sup>2</sup>

This executive-level emphasis on cross-border cooperation builds on an existing trend towards increased international collaboration in investigations by US criminal authorities. For example, in 2019 the Fraud Section of the US Department of Justice (DOJ) reported:

*Given the global nature of our economy, corruption abroad poses a serious threat to American citizens and companies that are trying to compete in a fair and transparent marketplace. Transnational corruption also empowers corrupt regimes and leads to destabilization of foreign governments, which can result in significant threats to America's national security. Our prosecutors cooperate with international law enforcement partners to fight foreign bribery offences committed by both American and foreign individuals and companies, and have coordinated significant corporate resolutions with foreign law enforcement over the past several years.*<sup>3</sup>

US authorities' commitment to cross-border cooperation in enforcement matters has extended beyond anti-corruption efforts. In December 2018, the Co-Director of Enforcement at the Securities Exchange Commission (SEC) – the US agency with civil enforcement authority for violations of the country's securities laws as well as the Foreign Corrupt Practices Act – emphasised the importance of international cooperation in assisting the agency's enforcement objectives, stating:

*Collaboration with international regulators and law enforcement is critical to the SEC's civil law enforcement success. In today's global, interconnected marketplace, fraudulent schemes and other misconduct often have cross-border elements, and the need for cooperation between the SEC's Division of Enforcement and international law enforcement*

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2 White House Briefing Room, Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest (3 June 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>.

3 DOJ Criminal Div., DOJ Fraud Section Year in Review 2019, at 9, <https://www.justice.gov/criminal-fraud/file/1245236/download>.

*and regulatory counterparts has never been greater. Our investigations often involve witnesses and evidence in different countries, transactions that cross international boundaries, and the resulting application of multiple different legal systems.*<sup>4</sup>

Other civil enforcement authorities in the United States have similarly made strides in enhancing their cooperative enforcement programmes. In 2019, the Commodity Futures Trading Commission (CFTC) – the US agency with principal oversight of derivatives markets – published an Enforcement Manual formalising and centralising the procedures staff must follow when seeking to obtain evidence from foreign sources.<sup>5</sup> The Enforcement Manual emphasises that ‘working cooperatively and in parallel with criminal authorities and other federal, state, or international regulators is a cornerstone to the Enforcement Program’.<sup>6</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>7</sup>

US criminal authorities at the DOJ 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>8</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 2021, the SEC has entered into

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4 Steven Peikin, Co-Director of Div of Enf’t, SEC, Remarks at the IOSCO/PIFS-Harvard Law School Global Certificate Program for Regulators of Securities Markets: The Salutary Effects of International Cooperation on SEC Enforcement (3 December 2018), <https://www.sec.gov/news/speech/speech-peikin-120318>.

5 Press Release, CFTC No. 7925-19, CFTC’s Division of Enforcement Issues First Public Enforcement Manual (8 May 2019), <https://www.cftc.gov/PressRoom/PressReleases/7925-19>.

6 CFTC Div of Enf’t, Enforcement Manual § 8, Cooperative Enforcement, at 36 (20 May 2020), <https://www.cftc.gov/media/1966/The-CFTC-Division-of-Enforcement-Enforcement-Manual/download>.

7 id.

8 US Dep’t of State, Treaties in Force, A List of Treaties and Other International Agreements of the United States in Force on 1 January 2020, <https://www.state.gov/wp-content/uploads/2020/08/TIF-2020-Full-website-view.pdf>.

such arrangements with authorities in a number of countries in Latin America, including Argentina (the National Securities Commission or CNV), Brazil (the Securities and Exchange Commission or CVM), Chile (the Supervision of Securities and Insurance or SVS) and Mexico (the National Banking and Securities Commission or CNBV).<sup>9</sup> The CFTC has entered into similar arrangements with Argentina (CNV), Brazil (CVM) and Mexico (CNBV).<sup>10</sup>

This increased focus on international cooperation has had meaningful and visible results in the enforcement landscape. In 2020 and 2021, as the global enforcement community navigated the covid-19 pandemic, the DOJ and the SEC repeatedly recognised coordination efforts between the US and authorities in Latin America and the importance of this coordination to reaching successful resolutions.

Cross-border enforcement and cooperation between authorities in the US and Brazil grew tremendously in the aftermath of *Operation Carwash*, and coordinated anti-corruption resolutions involving US and Brazilian authorities have continued. For example, on 25 June 2021, the SEC announced charges against Amec Foster Wheeler related to a scheme to pay bribes to officials in Brazil in exchange for an approximately US\$190 million contract to design a gas-to-chemicals complex.<sup>11</sup> As part of coordinated resolutions with the SEC, the DOJ, the Brazil Comptroller General of the Union (CGU), Attorney General Office

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9 MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information between US SEC and CNV of Argentina (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); MOU between US SEC and CVM 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); MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information between US SEC and SVS of Chile (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); MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information between US SEC and CNBV of Mexico (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).

10 MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information between US CFTC and CNV of Argentina (30 May 1995), <https://www.cftc.gov/idc/groups/public/%40internationalaffairs/documents/file/acnv95.pdf>; MOU on Mutual Assistance and Exchange of Information between US CFTC and CVM of Brazil (12 April 1991), <https://www.cftc.gov/idc/groups/public/%40internationalaffairs/documents/file/bcvm91.pdf>; MOU on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information between US CFTC and CNBV of Mexico (11 May 1995), <https://www.cftc.gov/idc/groups/public/%40internationalaffairs/documents/file/mcnbv95.pdf>.

11 Press Release, DOJ, Amec Foster Wheeler Energy Limited Agrees to Pay Over \$18 Million to Resolve Charges Related to Bribery Scheme in Brazil (25 June 2021), <https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery>.

(AGU) and Federal Prosecution Office (MPF), and the United Kingdom Serious Fraud Office, subsidiaries of United Kingdom-based John Wood Group agreed to pay a combined total of US\$177 million.<sup>12</sup>

Similarly, in December 2020, the DOJ, CFTC and Brazilian authorities entered into a coordinated resolution based on allegations of corrupt payments to state-owned entities in Brazil, Ecuador and Mexico. The CFTC also ordered the company to pay more than US\$95 million in civil monetary penalties and disgorgement, noting the company's cooperation during the investigation in the form of a reduced civil monetary penalty. The CFTC also offset a portion of the criminal penalty that the company agreed to pay to the DOJ in the parallel criminal action.<sup>13</sup>

Enforcement coordination between the US and Latin America does not end in Brazil. In 2020 and 2021 alone, the US DOJ publicly acknowledged the assistance of Guatemala, El Salvador, Ecuador and Panama in connection with FCPA-related cases.<sup>14</sup> Indeed, just a few years ago, almost one-third of the SEC's enforcement actions involved an international component, and the SEC's Office of International Affairs handled more than 1,200 requests for administrative assistance made to foreign regulators.<sup>15</sup>

The trend toward coordinated multilateral investigations and parallel enforcement is expected to continue, as enforcement authorities in the US and Latin America deepen their relationships with one another. This overall trend may be even further bolstered by increased activity from whistle-blowers in Latin America. US law provides significant incentives to whistle-blowers; individuals who report

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12 *id.*

13 Press Release, DOJ, Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Case (3 December 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>; Press Release, CFTC No. 8326-20, CFTC Orders Vitol Inc. to Pay \$95.7 Million for Corruption-Based Fraud and Attempted Manipulation (3 December 2020), <https://www.cftc.gov/PressRoom/PressReleases/8326-20>.

14 Press Release, DOJ, Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme (23 March 2021), <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>; Press Release, DOJ, Two Defendants Charged for Their Role in Bribery and Money Laundering Scheme Involving Former High-Ranking Government Official in Panama (6 July 2020), <https://www.justice.gov/opa/pr/two-defendants-charged-their-role-bribery-and-money-laundering-scheme-involving-former-high>.

15 Steven Peikin, Co-Director of Div. of Enf't, SEC, Remarks at the IOSCO/PIFS-Harvard Law School Global Certificate Program for Regulators of Securities Markets: The Salutary Effects of International Cooperation on SEC Enforcement (3 December 2018), <https://www.sec.gov/news/speech/speech-peikin-120318> (providing referencing statistics for FY 2018).

wrongdoing or provide tips that ultimately lead to successful enforcement actions may receive between 10 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. In one recent action, the CFTC announced that an overseas whistle-blower would receive a percentage of the amount of monetary sanctions collected by the agency in an enforcement action, with the Director of Enforcement stating:

*As our markets increasingly span the globe, this case shows that, no matter where individuals reside, they can have a significant impact on CFTC investigations when they share what they know about potential misconduct.<sup>16</sup>*

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

There is no universal roadmap 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.

### **Consistent messaging**

Coordinated announcements of resolutions across jurisdictions also permits consistent messaging on a global basis. For firms operating in a global operating environment, this sort of consistency can be critical to achieving their strategic

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16 Press Release, CFTC No. 8239-20, CFTC Awards Domestic and International Whistleblowers (11 September 2020), <https://www.cftc.gov/PressRoom/PressReleases/8239-20>.

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., ongoing 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>17</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.

### Crediting and offsets of penalties

Increasingly, US and non-US authorities have shown a willingness to credit amounts paid to other authorities against the penalties that would otherwise be imposed in a corporate resolution. Indeed, in May 2018, the DOJ announced its Policy on Coordination of Corporate Resolution Penalties, which instructs Department components to coordinate with one another and with other federal,

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17 DOJ Criminal Div., Evaluation of Corporate Compliance Programs (June 2020), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

state, local and foreign enforcement agencies in imposing multiple penalties on a company for investigations of the same misconduct.<sup>18</sup> The policy was designed to discourage disproportionate enforcement by alleviating overlapping demands multiple investigations can place on corporations and ‘the unnecessary imposition of duplicative fines, penalties and/or forfeiture against the company’.<sup>19</sup> Other US authorities have adopted similar practices.<sup>20</sup> The financial impact of such offsets can be substantial. For example, in a coordinated resolution announced in December 2020 relating to charges of corrupt payments for market intelligence in the energy sector, the amount payable by the corporate defendant to the DOJ was reduced by one-third – US\$45 million – as a result of an offset provided by the DOJ for amounts paid by the company to Brazil’s MPF in a coordinated resolution.<sup>21</sup>

### **Practical considerations for achieving a global resolution**

While 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.

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18 Rod Rosenstein, Deputy Att’y Gen, DOJ, Remarks to the New York City Bar White Collar Crime Institute (9 May 2019), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar>.

19 Jocelyn Strauber, DOJ Policies Aim to Reduce Enforcement Burden on Cooperating Entities, Skadden (17 January 2019), <https://www.skadden.com/en/insights/publications/2019/01/2019-insights/doj-policies-aim-to-reduce-enforcement-burden>.

20 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, ‘The 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’).

21 See, e.g., Press Release, DOJ, Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Case (3 December 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>.

## 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 internally within a company 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>22</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. And, in the absence of coordination, multilateral investigations may lead to *seriatim* and overlapping requests may 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.

Notwithstanding the increased trend towards cross-border information-sharing among enforcement authorities, 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

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22 See DOJ, Justice Manual § 9-47.120, FCPA Corporate Enforcement Policy (November 2019), <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#9-47.120>; CFTC Div of Enf't, Enforcement Manual § 8, Cooperative Enforcement (20 May 2020), <https://www.cftc.gov/LawRegulation/Enforcement/EnforcementManual.pdf>.

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:

*Cooperating with a different agency or a foreign government is not a substitute for cooperating with the Department of Justice. And we will not look kindly on companies that come to the Department of Justice only after making inadequate disclosures to secure lenient penalties with other agencies or foreign governments. In those instances, the Department will act without hesitation to fully vindicate the interests of the United States.*<sup>23</sup>

## Timing

Different authorities may have different timetables for completing their investigations 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 who 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 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 impact of

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23 Rod Rosenstein, Deputy Att'y Gen, DOJ, Remarks to the New York City Bar White Collar Crime Institute (9 May 2019), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar>.

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 for a company facing cross-border investigations. 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 therefore important 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.

## APPENDIX 1

# About the Authors

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Kathleen S McArthur is a partner in Sullivan & Cromwell's litigation group, where she serves as co-head of the commodities, futures and derivatives group as well as the firm's securities and commodities investigations and enforcement practice. She has advised some of the world's biggest companies on major matters involving complex financial products and physical commodities, including enforcement inquiries, internal investigations and commercial litigation. Katy has a keen understanding of trading and markets that enables her to advocate effectively for clients facing even the most complex allegations of fraud or market manipulation, including proceedings brought by the CFTC, SEC, FERC and DOJ. Among other accolades, she has been recognised by *Chambers USA* for derivatives and derivatives enforcement (2021) and selected as one of *Global Investigations Review's* top 100 'Women in Investigations' worldwide (2021). She also has been identified by *Who's Who Legal* as one of North America's 'Future Leaders in Investigations' (2020, 2021). Katy is a fellow of the Leadership Council on Legal Diversity and a native speaker of Spanish; she also is fluent in Portuguese.

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Aisling O'Shea is a partner in Sullivan & Cromwell's litigation group, where she serves as co-head of Sullivan & Cromwell's FCPA and anti-corruption group and a member of the criminal defence and investigations group. She has extensive experience in conducting internal investigations and defending clients in criminal and regulatory matters related to corruption, money laundering, securities and commodities fraud, tax evasion and criminal antitrust. She has represented financial institutions, multinational corporations and executives in investigations and

enforcement actions by numerous government authorities, including the DOJ, SEC, CFTC, various US Attorney's Offices, bank regulators and others. Aisling rejoined the firm in 2017 after more than five years of service as a trial attorney at the DOJ, where a complex FCPA and money-laundering investigation into corruption in Venezuela she led was recognised and won Homeland Security Investigations' 2016 award for Outstanding Financial Investigation. Aisling has been recognised by *Chambers Global* (2021) and *Chambers USA* (2020–2021) for FCPA and named as one of the top 100 'Women in Investigations' worldwide (*Global Investigations Review*, 2018), an 'FCPA Practitioner to Watch' (*Global Investigation Review*, 2021), a 'Global Leader in Investigations' (*Who's Who Legal*, 2021) and one of North America's 'Future Leaders in Investigations' (*Who's Who Legal* 2019, 2020).

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Published by Latin Lawyer and LACCA, edited by Sergio J Galvis, Robert J Giuffra Jr and Werner F Ahlers, partners at Sullivan & Cromwell LLP, *The Guide to Corporate Crisis Management* is designed to assist key business decision makers and their advisers in effectively planning for and managing a corporate crisis in Latin America.

This guide delivers specialist insight to our readers – general counsel, compliance officers, government agencies and private practitioners – who must navigate the region’s complex, fast-changing framework of rules and regulations.

In preparing this guide, we have been working with practitioners from a variety of disciplines and geographies, who have contributed a wealth of knowledge and experience. We are grateful for their cooperation and insight.

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