

# The Practitioner's Guide to Global Investigations

Volume I: Global Investigations in the  
United Kingdom and the United States

SEVENTH EDITION

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**Editors**

Judith Seddon, Eleanor Davison, Christopher J Morvillo, Luke Tolaini,  
Celeste Koeleveld, F Joseph Warin, Winston Y Chan

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# **The Practitioner's Guide to Global Investigations**

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## **Volume I: Global Investigations in the United Kingdom and the United States**

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# **The Practitioner's Guide to Global Investigations**

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# 26

## Fines, Disgorgement, Injunctions, Debarment: The US Perspective

**Matthew Kutcher, Alexandra Eber, Matt K Nguyen, Wazhma Sadat  
and Kimberley Bishop<sup>1</sup>**

### 26.1 Introduction

This chapter provides an overview of the potential fines, penalties and other collateral consequences to corporates and individuals facing enforcement actions brought by authorities under United States federal law. The government's use of monetary fines and penalties has remained a dynamic area as authorities pursue enforcement in traditional areas such as the Foreign Corrupt Practices Act (FCPA), money laundering statutes and the Racketeer Influenced and Corrupt Organizations Act (RICO), emerging areas such as cybersecurity and cryptocurrency, and the application of traditional enforcement to new areas, such as the prosecution of false opioid marketing and covid-19 relief fraud under the False Claims Act (FCA).

In recent years, both the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) have exacted significant financial penalties through enforcement actions and settlements. For example, in the fiscal year ending in September 2021, the DOJ obtained more than US\$5.6 billion in total settlements and judgments from FCA cases alone<sup>2</sup> – more than double

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1 Matthew Kutcher is a partner, and Alexandra Eber, Matt K Nguyen, Wazhma Sadat and Kimberley Bishop are associates, at Cooley LLP. The authors wish to acknowledge the contribution of Rita D Mitchell of Willkie Farr & Gallagher LLP, who authored the chapter in previous editions on which this chapter is partly based.

2 Press Release, DOJ, 'Justice Department's False Claims Act Settlements and Judgments Exceed \$5.6 Billion in Fiscal Year 2021' (1 February 2022), <https://www.justice.gov/opa/pr/justice-department-s-false-claims-act-settlements-and-judgments-exceed-56-billion-fiscal-year>.

the US\$2.2 billion the DOJ secured in the prior fiscal year.<sup>3</sup> This significant increase is largely attributable to the DOJ's US\$2.8 billion FCA settlement with major pharmaceutical company Purdue Pharma for its alleged role in the opioid crisis.<sup>4</sup> Also in Fiscal Year 2021, the US Attorney's Office for the Eastern District of New York alone collected nearly US\$250 million in criminal and civil actions.<sup>5</sup> Other US Attorney's Offices across the country posted large collection numbers for 2021, including over US\$48 million by the Eastern District of Virginia,<sup>6</sup> over US\$38.5 million by the District of Nevada,<sup>7</sup> over US\$38 million by the District of Arizona,<sup>8</sup> and over US\$36 million by the Southern District of Georgia.<sup>9</sup>

In Fiscal Year 2021, the SEC filed 697 enforcement actions, including 434 new enforcement actions, and obtained judgments and orders totaling approximately US\$3.8 billion in disgorgement and penalties.<sup>10</sup> The total number of actions filed was just shy of the SEC record of 715 enforcement actions filed in Fiscal Year 2020, but represented a 7 per cent increase in new enforcement actions over the prior year.<sup>11</sup>

Regulators remain focused on coordinated enforcement efforts aimed at ensuring economic fairness. The DOJ's strategic plan for financial years

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3 Press Release, DOJ, 'Justice Department Recovers Over \$2.2 Billion from False Claims Act Cases in Fiscal Year 2020' (14 January 2021), <https://www.justice.gov/opa/pr/justice-department-recovers-over-22-billion-false-claims-act-cases-fiscal-year-2020>.

4 Press Release, DOJ, 'Justice Department Announces Global Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family' (21 October 2020), <https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-opioid>.

5 Press Release, DOJ, 'Eastern District of New York United States Attorney's Office Collects Nearly \$250 Million in Criminal and Civil Actions in Fiscal Year 2021' (22 December 2021), <https://www.justice.gov/usao-edny/pr/eastern-district-new-york-united-states-attorney-s-office-collects-nearly-250-million>.

6 Press Release, DOJ, 'EDVA Collects over \$48 M in Civil and Criminal Actions in Fiscal Year 2021' (3 January 2022), <https://www.justice.gov/usao-edva/pr/edva-collects-over-48-m-civil-and-criminal-actions-fiscal-year-2021>.

7 Press Release, DOJ, 'U.S. Attorney's Office Collects Over \$38.5 Million in Civil and Criminal Actions in Fiscal Year 2021' (28 December 2021), <https://www.justice.gov/usao-nv/pr/us-attorneys-office-collects-over-385-million-civil-and-criminal-actions-fiscal-year-2021>.

8 Press Release, DOJ, 'U.S. Attorney's Office Collects Over \$38 Million in Criminal and Civil Actions in Fiscal Year 2021' (18 January 2022), <https://www.justice.gov/usao-az/pr/us-attorneys-office-collects-over-38-million-criminal-and-civil-actions-fiscal-year-2021>.

9 Press Release, DOJ, 'U.S. Attorney's Office recovers more than \$36 million in civil, criminal actions in Fiscal Year 2021' (5 January 2022), <https://www.justice.gov/usao-sdga/pr/us-attorneys-office-recovers-more-36-million-civil-criminal-actions-fiscal-year-2021>.

10 Press Release, SEC, 'SEC Announces Enforcement Results for FY 2021' (18 November 2021), <https://www.sec.gov/news/press-release/2021-238>.

11 Id.; see also SEC Div. of Enf't, 2020 Annual Report at 3 (2 November 2020), <https://www.sec.gov/files/enforcement-annual-report-2020.pdf>.

2022–2026 promises that the DOJ will ‘aggressively prosecute corporate crime, not only by holding companies accountable for their criminal conduct, but also by prosecuting the individuals who commit and profit from corporate malfeasance’.<sup>12</sup> The SEC has said it will focus on (1) ‘robust enforcement’ by positioning itself as ‘the cop on the beat’ for the ‘entire securities waterfront’; (2) ‘robust remedies’, including a focus on prophylactic relief ‘such as officer and director bars, associational bars, suspensions, conduct-based injunctions and undertakings’; and (3) ‘robust compliance’ aimed at restoring trust by requiring companies to guard against emerging risks.<sup>13</sup> As regulators ramp up enforcement in areas such as cybersecurity, cryptocurrency and covid-19 relief fraud, companies should expect to see increased enforcement activity in the next fiscal year, which will likely lead to increased penalties and fines.

## 26.2 Standard criminal fines and penalties available under federal law

### 26.2.1 Financial penalties

Many federal statutes contain their own fining provisions, which typically include a maximum amount. Additionally, for some crimes, the Alternative Fines Act provides for an alternative maximum fine of double the gross gain received, or the gross loss caused to another, from the unlawful activity.<sup>14</sup> Under the securities fraud statute, where a fine is imposed against an officer, director, employee, agent or shareholder of a corporate issuer, the fine may not be paid, directly or indirectly, by the corporate issuer.<sup>15</sup> The DOJ may also seek asset forfeiture to deprive those who violate the law of the proceeds of their crime and compensate victims.<sup>16</sup> There are three types of forfeiture under federal law: criminal, civil judicial and administrative.<sup>17</sup> Criminal forfeiture is available where there is a conviction and is generally limited to the property involved in the illegal activity for which the defendant has been convicted.<sup>18</sup> Civil judicial forfeiture is available where the government can prove that certain property was derived from, or used to commit, criminal activity.<sup>19</sup> A civil judicial forfeiture action is brought *in rem* and no criminal conviction is required.<sup>20</sup> Administrative forfeiture is an *in rem* action that permits forfeiture through a

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12 DOJ FYs 2022-2026 Strategic Plan (26 August 2022), <https://www.justice.gov/doj/book/file/1516901/download>.

13 Testimony on ‘Oversight of the SEC’s Division of Enforcement’ Before the U.S. House of Representatives Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets (21 July 2022), <https://www.sec.gov/news/statement/grewal-statement-house-testimony-071922>.

14 See 18 U.S.C. § 3571; *S. Union Co. v. United States*, 567 U.S. 343, 348–51 (2012).

15 15 U.S.C. § 78ff(c)(3).

16 Types of Federal Forfeiture, DOJ, <https://www.justice.gov/afms/types-federal-forfeiture>.

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

process before the agency seizing the assets rather than in federal court. It is available where no one contests the forfeiture.<sup>21</sup> For certain offences, the DOJ may seek both criminal and civil forfeiture.<sup>22</sup>

Recent examples of forfeiture include (1) nearly US\$1.1 billion in assets recovered in connection with various forfeiture cases related to the 1MDB (the Malaysian sovereign wealth fund) international money laundering and bribery scheme,<sup>23</sup> and (2) more than US\$54 million forfeited in 2020 related to the DC Solar Ponzi scheme (where at least half of the solar generators claimed to have been manufactured by the defendant did not actually exist).<sup>24</sup>

Under the United States Code (USC) provisions relating to criminal penalties, corporates and individuals may also be required to pay restitution, taking into consideration the amount of loss sustained by each victim, the financial resources of the defendant and any other factors a reviewing court deems appropriate.<sup>25</sup>

## United States Sentencing Guidelines

## 26.2.2

Federal courts in the United States must consider the United States Sentencing Guidelines (the Sentencing Guidelines) in imposing a criminal sentence in corporate and individual sentencings, but they are not required to impose sentences within Guideline ranges (and often impose sentences well below guidelines).

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21 *Id.*

22 See, e.g., 18 U.S.C. § 982(a) (in connection with sentencing persons convicted of certain federal offences, including money laundering and other financial crimes, courts shall order criminal forfeiture of property 'involved in such offense, or any property traceable to such property'); *id.* § 981(a) (property involved in certain federal offences, including money laundering and other financial crimes, 'or any property traceable to such property', is subject to civil forfeiture). Under the civil forfeiture statute, 18 U.S.C. § 981(a)(1)(C), property relating to a 'specified unlawful activity' as defined in 18 U.S.C. § 1956(c)(7) is subject to civil forfeiture. Among the 'specified unlawful activities' listed in 18 U.S.C. § 1956(c)(7) are racketeering, bribery of a public official, fraud by or against a foreign bank, export control violations and violations of the FCPA. Further, 28 U.S.C. § 2461(c) 'permits the government to seek *criminal* forfeiture whenever civil forfeiture is available *and* the defendant is found guilty of the offense'. *United States v. Newman*, 659 F.3d 1235, 1239 (9th Cir. 2011) (original emphasis).

23 Press Release, DOJ, 'United States Reaches Settlement to Recover More Than \$49 Million Involving Malaysian Sovereign Wealth Fund' (6 May 2020), <https://www.justice.gov/opa/pr/united-states-reaches-settlement-recover-more-49-million-involving-malaysian-sovereign-wealth>.

24 Press Release, DOJ, 'Court Orders Final Forfeiture of Over \$54 Million in Connection with Billion Dollar Ponzi Scheme' (15 April 2020), <https://www.justice.gov/usao-edca/pr/court-orders-final-forfeiture-over-54-million-connection-billion-dollar-ponzi-scheme>.

25 18 U.S.C. § 3663(a)(1)(B)(i).

For corporates, the calculation of the applicable fine under the Sentencing Guidelines is made by (1) identifying a ‘base fine’,<sup>26</sup> (2) identifying the minimum and maximum multipliers that, combined with the base fine, create a ‘fine range’,<sup>27</sup> and (3) considering whether any factors warrant any adjustments, upwards or downwards, to that range.<sup>28</sup>

To calculate the base fine, the first step is to identify the ‘offence level’, which depends on the characteristics of the crime. The ‘base offence level’ is set according to the nature of the conduct or the statute violated and then the overall offence level will increase or decrease depending on factors outlined in the Guidelines Manual.<sup>29</sup> The total offence level helps to determine the base fine, which is the greatest of the amount specified in a table that translates the offence level into a base fine, the pecuniary gain to the organisation from the offence, or the pecuniary loss from the offence caused by the organisation, ‘to the extent the loss was caused intentionally, knowingly, or recklessly’.<sup>30</sup>

The second step is to calculate the ‘culpability score’, which yields the minimum and maximum multipliers to be applied to the base fine. The culpability score is based on the characteristics of the defendant. Relevant factors may include the size of the organisation and the degree of participation in, or tolerance of, the wrongdoing; the defendant’s prior criminal history; whether the defendant has violated an order or injunction, or violated a condition of probation by committing similar misconduct to that for which probation was ordered; whether the defendant was found to have obstructed justice; the existence of an effective compliance programme; and self-reporting, co-operation and acceptance of responsibility.<sup>31</sup> The potential multipliers can range from 0.05 (a reduction of 20 times the base fine) to 4.0 (four times the base fine), depending on the culpability score. The fine range reflects the minimum and maximum multipliers as applied to the base fine. In addition to the fine, any gain to the corporate from an offence that is not otherwise part of the corporate’s restitution or remediation is subject to disgorgement.<sup>32</sup>

Finally, the Sentencing Guidelines allow for adjustments from the fine range. This may include a reduction for substantial assistance to the government in its investigation of others<sup>33</sup> or remedial costs that exceed the gain to the corporate.<sup>34</sup> Unlike the factors that are considered for calculating the offence level and culpability score, the detriments or benefits that result from adjust-

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26 U.S. Sent’g Comm’n, Guidelines Manual § 8C2.4 (Guidelines Manual), <https://www.uscourts.gov/sites/default/files/pdf/guidelines-manual/2021/GLMFull.pdf>.

27 *Id.* §§ 8C2.6–8C2.7.

28 *Id.* §§ 8C4.1–8C4.11.

29 Base offence levels are set out in Chapter Two of the Guidelines Manual.

30 *Id.* § 8C2.4.

31 *Id.* § 8C2.5.

32 *Id.* § 8C2.9.

33 *Id.* § 8C4.1.

34 *Id.* § 8C4.9.



ments are not quantified. The court in its discretion imposes a fine within the fine range, or above or below the range. For negotiated resolutions, a corporate, through its counsel, will often negotiate the fine range with the government.

## Civil penalties

26.3

Civil monetary remedies can include penalties, disgorgement and prejudgment interest. Each of these has a different purpose and method of calculation.

The SEC may impose civil monetary penalties on any person who violates or causes a violation of the securities laws. For example, the Securities Act of 1933 and the Securities Exchange Act of 1934 authorise three tiers of civil penalties and the civil penalties imposed under these statutes can range from under US\$10,000 to over US\$1 million, per violation, after adjusting for inflation. Less serious civil violations fall into the first tier, where the penalty is no more than US\$9,753 for an individual or US\$97,523 for a corporate for 'each act or omission' violating the federal securities laws. The second tier applies to violations involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, for which the maximum penalty is US\$97,523 for individuals and US\$487,616 for corporates, again for each act or omission. Finally, the third tier applies to violations involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement that also directly or indirectly resulted in 'substantial losses . . . to other persons' or 'substantial pecuniary gain to the person who committed the act or omission'.<sup>35</sup> Third-tier penalties have a limit of US\$195,047 for individuals and US\$975,230 for corporates, for each act or omission.<sup>36</sup>

Where the defendant's conduct involved multiple violations, the SEC may seek a penalty for each violation. Courts will accordingly consider, in addition to the appropriate tier to apply, whether the conduct constituted multiple violations. For example, in a November 2021 case involving a 'prime bank' fraud scheme, a federal court granted the SEC's request that the defendants receive third-tier civil monetary penalties and accepted the SEC's request that the penalties be calculated by multiplying the statutory maximum penalty per violation.<sup>37</sup> To determine the number of violations, the court counted 'each of the transactions in which the individual Defendant took a leading role'.<sup>38</sup>

Civil penalties for insider trading depend on the profits generated by the illicit trading. A district court can order civil penalties up to three times the

35 15 U.S.C. § 78u-2(b); 17 C.F.R. § 201.1001; Inflation Adjustments to the Civil Monetary Penalties Administered by the Securities and Exchange Commission (as of 15 January 2022), SEC, <https://www.sec.gov/enforce/civil-penalties-inflation-adjustments> (last updated 9 August 2022). The maximum civil penalty amounts noted above are for violations after 2 November 2015. Maximum civil penalty amounts will be adjusted annually for inflation, as described in 17 C.F.R. § 201.1001.

36 17 C.F.R. § 201.1001.

37 *SEC v. Baker*, No. 1:19-cv-02565, 2021 WL 9385893, \*8 (N.D. Ga. 8 November 2021).

38 *Id.*

profit gained or loss avoided by the violative trade.<sup>39</sup> The DOJ likewise may seek civil penalties in certain types of matters, such as violations of federal financial, health, safety, civil rights and environmental laws.<sup>40</sup>

## 26.4 Disgorgement and prejudgment interest

The SEC and DOJ may also seek disgorgement to prevent an entity or individual from profiting from illegal conduct and to deter subsequent misconduct.<sup>41</sup>

In 2021, Congress made several important changes to the US securities laws related to the SEC's ability to recover funds through disgorgement.<sup>42</sup> Specifically, certain disgorgement-related provisions of the Securities Exchange Act of 1934 were amended to (1) expressly grant the SEC statutory authority to pursue disgorgement as a remedy for civil enforcement actions in federal court, (2) extend the statute of limitations for all disgorgement actions involving fraud and scienter from five years to 10 years and (3) direct courts to apply a 10-year statute of limitations for all other claims seeking equitable remedies, such as injunctions, bars, suspensions and cease-and-desist orders, greatly expanding the time frame in which the SEC can seek disgorgement and increasing the total disgorgement the SEC can collect.

This legislation may have been a reaction to the US Supreme Court's decisions in two cases, *Kokesh v. SEC* (holding that disgorgement is subject to a five-year statute of limitation) and *Liu v. SEC* (holding that the SEC could only seek disgorgement that does not exceed the defendant's net profits and suggesting in *dicta* that disgorgement may be an equitable remedy and therefore not available, for example, where money cannot be returned to investors). An August 2022 decision from the Middle District of Florida was the first to directly address the SEC's authority since the new legislation. The court ordered nearly US\$115,000 in disgorgement even though it was not possible

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39 15 U.S.C. § 78u-1(a).

40 See e.g., 12 U.S.C. § 1833a (providing a civil money penalty provision to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 which allows the DOJ to seek civil penalties against persons who violate one of 14 enumerated statutes); 42 U.S.C. § 3614(d)(1)(C) (allowing the DOJ to seek civil penalties for violations of the Fair Housing Act 1968).

41 See *SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993); *SEC v. Cavanaugh*, 445 F.3d 105, 117 (2d Cir. 2006) (noting that disgorgement 'has the effect of deterring subsequent fraud'); Press Release, DOJ, Deutsche Bank Agrees to Pay over \$130 Million to Resolve Foreign Corrupt Practices Act and Fraud Case (8 January 2021), <https://www.justice.gov/opa/pr/deutsche-bank-agrees-pay-over-130-million-resolve-foreign-corrupt-practices-act-and-fraud>.

42 William M (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Investigations and Prosecution of Offenses for Violations of the Securities Laws, H.R. 6395, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6395/text?r=8&s=1>.

to identify specific investors who were harmed by the defendants, with the amount to be given to the US Treasury.<sup>43</sup>

The SEC can also obtain prejudgment interest on any disgorgement amount. The rules that apply to administrative proceedings brought by the SEC require that such amounts be included in any disgorgement,<sup>44</sup> and courts reviewing those proceedings generally may determine whether prejudgment interest is appropriate.<sup>45</sup> The interest rate applied is typically the 'underpayment' rate set by the Internal Revenue Service.<sup>46</sup> There is no single approach for measuring when the clock begins to run on interest calculations. In some cases, it has been measured from the date the ill-gotten funds were received and runs up to the date of judgment;<sup>47</sup> in others, it may run from multiple dates where the matter involves multiple transactions,<sup>48</sup> or, where the applicable dates are difficult to identify, from the date of the complaint.<sup>49</sup>

## Injunctions

## 26.5

The DOJ may also seek affirmative relief through an injunction where it is deemed necessary to advance the public interest. Injunction actions may be specifically provided for by statute, used to enforce statutes that do not specifically provide for injunctive relief or sought from an appellate court pursuant to the All Writs Act.<sup>50</sup>

Likewise, the SEC may seek a preliminary or permanent injunction when it appears that a person is engaged in, or is about to engage in, acts or practices constituting a violation of the securities laws.<sup>51</sup> For example, in February 2022,

43 *SEC v. Spartan Sec. Grp., Ltd*, 8:19-cv-448, ECF 22586 (M.D. Fla. 10 August 2022).

The defendants are expected to appeal.

44 17 C.F.R. § 201.600(a).

45 *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996).

46 *Id.* (citing SEC Rules and Regulations, 60 Fed. Reg. 32738, 32788 (23 June 1995)); see also 17 C.F.R. § 201.600(b). The underpayment rate charged by the Internal Revenue Service is three percentage points above the federal short-term rate and for purposes of calculating interest on sums disgorged is compounded quarterly. 26 U.S.C. § 6621(a)(2); 17 C.F.R. § 201.600(b).

47 *SEC v. DiBella*, 2008 WL 6965807, at \*3 (D. Conn. 18 July 2008); *SEC v. GMC Holding Corp.*, 2009 WL 506872, at \*6 (M.D. Fla. 27 February 2009) ('The time frame for the imposition of prejudgment interest usually begins with the date of the unlawful gain and ends at the entry of judgment.' (quoting *SEC v. Yun*, 148 F. Supp. 2d 1287, 1293 (M.D. Fla. 2001))).

48 *SEC v. Savino*, 2006 WL 375074, at \*18 & n.10 (S.D.N.Y. 16 February 2006) (calculating interest from the first day of the month following each improper trade).

49 *SEC v. United Energy Partners, Inc.*, 2003 WL 223392, at \*2 n.12 (N.D. Tex. 28 January 2003), *aff'd*, 88 F. App'x 744 (5th Cir. 2004) (using date of complaint for accrual of prejudgment interest award where dates on which defendant acquired disgorged funds were not clear); *GMC Holding Corp.*, 2009 WL 506872, at \*6 (same).

50 28 U.S.C. § 1651(a); see also DOJ, Civil Resource Manual § 214, <https://www.justice.gov/jm/civil-resource-manual-214-injunctions>.

51 15 U.S.C. § 77t(b); *id.* § 78u(d).

the SEC obtained a preliminary injunction barring the company Cell>Point from further fraudulent conduct, after the court held that the SEC had shown material misrepresentations and omissions and the likelihood of future violations.<sup>52</sup>

## 26.6 Other consequences

In addition to these criminal and civil penalties, defendants may face other consequences as a result of a US criminal or civil action. For one, investigation or prosecution by authorities in one jurisdiction may also lead to investigations, prosecutions or resolution short of prosecution by authorities in other jurisdictions. For example, in January 2020, the largest foreign bribery settlement to date was entered into between airplane manufacturer Airbus and authorities in France, the United Kingdom and the United States. Airbus agreed to pay combined penalties of over US\$3.9 billion to resolve anti-corruption and export control violations.<sup>53</sup> This trend shows no signs of slowing: in April 2022, Stericycle agreed to pay over US\$84 million to resolve parallel investigations by authorities in the United States and Brazil into the bribery of foreign officials in Brazil, Mexico and Argentina.<sup>54</sup>

In addition, in connection with certain types of enforcement actions, such as FCPA enforcement, money laundering and sanctions violations, corporates may also be required to retain corporate compliance monitors. While there was a sharp decline in the imposition of compliance monitors in FCPA resolutions in recent years – none was imposed in 2020 or 2021 – the DOJ appears to be changing course. After Deputy Attorney General Lisa Monaco announced in October 2021 that she was rescinding any guidance which ‘suggested that monitorships are disfavored or are the exception’,<sup>55</sup> the DOJ announced two FCPA resolutions that required companies to retain independent compliance monitors: the April 2022 resolution with Stericycle<sup>56</sup> and a May 2022 FCPA

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52 Press Release, SEC, ‘SEC Obtains Preliminary Injunction Against Biotech Company and Executives Charged with Engaging in \$10 Million Offering Fraud’ (15 March 2022), <https://www.sec.gov/litigation/litreleases/2022/lr25345.htm>.

53 Press Release, DOJ, ‘Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case’ (31 January 2020), <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>.

54 Press Release, DOJ, ‘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>.

55 Deputy Attorney General Lisa O Monaco Gives Keynote Address at ABA’s 36th National Institute on White Collar Crime (28 October 2021).

56 Press Release, DOJ, ‘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>.

and commodity price manipulation resolution with Swiss mining and commodities trading company Glencore.<sup>57</sup>

Finally, in some circumstances, individuals or entities may be barred or suspended from doing business with the executive branch of the United States government.<sup>58</sup>

## Remedies under specific statutes

26.7

By way of example, the fines, penalties and other remedies associated with particular federal criminal statutes of potential interest are outlined below.

### False Claims Act

26.7.1

The FCA imposes liability on any person who knowingly submits a false claim to the government, causes another to submit a false claim to the government, or makes a false record or statement that is material to the government's decision to pay a claim.

Financial penalties under the FCA can be significant. In addition to a fine of up to US\$10,000 (plus inflation) for each false claim, those found liable must also pay treble the amount of damages that the government sustained because of the false claim as well as the government's legal fees for litigating the action.<sup>59</sup> Under certain conditions, those who self-report the violation to the government are still liable for not less than double damages.<sup>60</sup>

The FCA also establishes a mechanism for private enforcement pursuant to its *qui tam* provisions. In accordance with these provisions, a private individual known as a 'relator' may file suit on behalf of the government for recovery of FCA damages.<sup>61</sup> A common relator is a corporate whistleblower.<sup>62</sup> When a *qui tam* action is filed, the government must investigate the relator's allegations and either (1) intervene in the suit and take primary responsibility for prosecuting the action, or (2) decline to intervene and allow the relator to proceed alone.<sup>63</sup> In either circumstance, the relator is entitled to receive a percentage of any funds recovered for the government and may also recover legal fees.<sup>64</sup>

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57 Press Release, DOJ, '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>.

58 48 C.F.R. §§ 9.406-1(c), 9.407-1(d).

59 31 U.S.C. § 3729(a)(1), (3).

60 *Id.* § 3729(a)(2).

61 31 U.S.C. § 3730(b).

62 Press Release, DOJ, 'United States Attorney Rachael S Rollins Hosts Panel for Whistleblower Lawyers' (27 July 2022), <https://www.justice.gov/usao-ma/pr/united-states-attorney-rachael-s-rollins-hosts-panel-whistleblower-lawyers>.

63 31 U.S.C. § 3730(b)(1), (b)(4)(A)-(B).

64 *Id.* § 3730(d)(1)-(2).

Since the FCA was enacted, the government has recovered over US\$70 billion in FCA judgments and settlements.<sup>65</sup> During Fiscal Year 2021, the DOJ recovered US\$5.6 billion in FCA judgments, the DOJ's second-largest annual recovery in history. This annual haul included a record-setting US\$2.8 billion global opioid settlement with Purdue Pharma for promoting its opioid drugs to health care providers 'it knew were prescribing opioids for uses that were unsafe, ineffective, and medically unnecessary' and for encouraging such prescriptions through several kickback schemes billed to federal health programmes.<sup>66</sup> And in 2022, the DOJ secured a record US\$48.5 million settlement based on alleged small-business contracting fraud and US\$100,000 in individual penalties levied against the corporate executive responsible.<sup>67</sup>

During the covid-19 pandemic, the government has also secured FCA judgments and settlements for improper receipt of paycheck protection programme (PPP) loans, economic injury disaster loans and unemployment insurance proceeds, all intended for pandemic-related business and employment expenses.<sup>68</sup> Through its COVID-19 Fraud Enforcement Task Force, the DOJ has criminally charged over 1,000 defendants related to approximately US\$1.1 billion in alleged loan fraud and has initiated civil investigations into over 1,800 persons for another US\$6 billion.<sup>69</sup> As one example, in 2022, a federal government contractor agreed to a three-year deferred prosecution agreement, a US\$2.7 million FCA settlement, a US\$250,000 penalty, and a host of restrictions on employment and auditing to resolve claims that the company misused PPP loans.<sup>70</sup>

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65 DOJ, Justice Manual § 9-27.110 (2018) (Justice Manual), <https://www.justice.gov/jm/justice-manual>.

66 Press Release, DOJ, 'Justice Department Announces Global Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family' (21 October 2020), <https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-opioid>.

67 Press Release, DOJ, 'Government Contractor Agrees to Pay Record \$48.5 Million to Resolve Claims Related to Fraudulent Procurement of Small Business Contracts Intended for Service-Disabled Veterans' (23 February 2022), <https://www.justice.gov/usao-edwa/pr/government-contractor-agrees-pay-record-485-million-resolve-claims-related-fraudulent>.

68 See, e.g., Press Release, DOJ, 'COVID-19 Task Force Nets Florida Duct Cleaning Company; Settles False Claims Act Allegations Relating to Improper Paycheck Protection Program Loan' (28 October 2021), <https://www.justice.gov/opa/pr/covid-19-task-force-nets-florida-duct-cleaning-company-settles-false-claims-act-allegations>; Press Release, DOJ, 'Northern Virginia Company Settles False Claims Act Allegations of Improper Paycheck Protection Program Loan' (11 February 2022), <https://www.justice.gov/opa/pr/northern-virginia-company-settles-false-claims-act-allegations-improper-paycheck-protection>.

69 Press Release, DOJ, 'Justice Department Announces Director for COVID-19 Fraud Enforcement: Criminal and Civil Enforcement Actions Alleging Fraud Related to Over \$8 Billion in Pandemic Relief' (10 March 2022), <https://www.justice.gov/opa/pr/justice-department-announces-director-covid-19-fraud-enforcement>.

70 Press Release, DOJ, 'HPM Corporation and Owners Accept Responsibility, Agree to Pay Nearly \$3 Million in Restitution and Penalties for Fraudulent Covid-19 Relief Loan' (25 March 2022),

## Foreign Corrupt Practices Act

The FCPA criminalises bribery of foreign officials, either directly or through an intermediary, to obtain business or some other benefit. Its anti-bribery provisions apply not only to all US corporates and persons, but also can apply to foreign corporates that issue securities within the United States or file certain reports with the SEC, as well as to these issuers' officers and employees, among others. The FCPA also criminalises actions taken in the United States by foreign corporates or their agents in furtherance of an improper payment or offer. The FCPA's books and records and internal controls provisions also require corporates that issue securities within the United States or file reports with the SEC to keep accounting records that accurately reflect the corporate's transactions and to maintain a system of internal controls.<sup>71</sup>

Violations of the FCPA can result in heavy penalties. For one, corporate entities may be subject to financial penalties of up to US\$2 million per violation of the FCPA's anti-bribery provisions,<sup>72</sup> US\$25 million per violation of the FCPA's accounting provisions,<sup>73</sup> or up to twice the gross pecuniary gain or loss from the violation pursuant to the Alternative Fines Act.<sup>74</sup> In addition, civil penalties for FCPA anti-bribery and accounting provisions violations may apply.<sup>75</sup>

Further, individuals may be either fined up to US\$100,000 (US\$250,000 under the Alternative Fines Act or twice the gain or loss from the violation) or imprisoned for up to five years, or both, for a criminal violation of the FCPA's anti-bribery provisions.<sup>76</sup> For criminal violations of the FCPA's accounting provisions, individuals can be subject to a fine of up to US\$5 million or imprisonment for up to 20 years, or both.<sup>77</sup> Individuals may also face civil penalties for FCPA anti-bribery and accounting provisions violations.<sup>78</sup> For civil violations of the FCPA's anti-bribery provisions, individuals can be subject to a fine of up to US\$23,011, while they can be subject to a

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<https://www.justice.gov/usao-edwa/pr/hpm-corporation-and-owners-accept-responsibility-agree-pay-nearly-3-million-restituti-0>.

71 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a), 78(m).

72 *Id.* §§ 78dd-2(g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).

73 *Id.* § 78ff(a).

74 18 U.S.C. § 3571 (c)(2), (d).

75 15 U.S.C. §§ 78ff(c)(1)(B), 78u(d)(3); 17 C.F.R. § 201.1001; Inflation Adjustments to the Civil Monetary Penalties Administered by the Securities and Exchange Commission (as of 15 January 2022), SEC, <https://www.sec.gov/enforce/civil-penalties-inflation-adjustments> (last updated 9 August 2022).

76 15 U.S.C. §§ 78dd-2(g)(2), 78dd-3(e)(2); 18 U.S.C. § 3571 (b)(2)-(3), (d).

77 15 U.S.C. § 78ff(a).

78 *Id.* §§ 78ff(c)(2)(B), 78u(d)(3); 17 C.F.R. § 201.1001; Inflation Adjustments to the Civil Monetary Penalties Administered by the Securities and Exchange Commission (as of 15 January 2022), SEC, <https://www.sec.gov/enforce/civil-penalties-inflation-adjustments> (last updated 9 August 2022).

See Chapter 43 on individual penalties

fine of up to US\$1,035,909 for a civil violation of the accounting provisions.<sup>79</sup> Issuers, as defined under the FCPA, are prohibited from paying these individuals' criminal and civil fines.<sup>80</sup>

Moreover, the DOJ may also bring a civil action to seek an injunction against domestic concerns and persons other than issuers to prevent a current or imminent FCPA violation.<sup>81</sup> Likewise, the SEC may seek injunctions to prevent FCPA violations from occurring.<sup>82</sup>

In addition, disgorgement is often a key component of a civil FCPA resolution. For example, in October 2021, Credit Suisse agreed to pay the SEC nearly US\$100 million to resolve FCPA charges related to Mozambican bond offerings. More than US\$34 million of this was disgorgement.<sup>83</sup>

For corporates seeking to avoid the heaviest penalties, however, the FCPA Corporate Enforcement Policy establishes a presumption that, 'absent aggravating circumstances' such as involvement by executive management in the misconduct or significant profit to the corporate from the misconduct, a corporate will receive a declination if it 'has voluntarily self-disclosed misconduct in an FCPA matter, fully cooperated, and timely and appropriately remediated'. Moreover, even if aggravating circumstances are present, for a corporate that voluntarily self-discloses, fully co-operates and timely and appropriately remediates, the DOJ may still decline prosecution or will still likely recommend a 50 per cent reduction off the low end of the US Sentencing Guidelines fine range, except in the case of a recidivist.<sup>84</sup> Where a corporate does not voluntarily self-disclose but nevertheless fully co-operates and timely and appropriately remediates, the DOJ will recommend up to a 25 per cent reduction off the low end of the Guidelines. To be eligible, the corporate must pay all disgorgement, forfeiture and restitution from the misconduct at issue.<sup>85</sup>

### 26.7.3 Federal criminal money laundering

The principal federal criminal money laundering statutes are 18 USC Sections 1956 and 1957. Section 1956 generally prohibits a person from knowingly engaging in financial transactions with the proceeds of certain unlawful activities to promote further unlawful activity, concealing the proceeds, evading taxes or avoiding reporting requirements. Section 1957 also prohibits a person from knowingly engaging in a monetary transaction involving property valued at more than US\$10,000 that derives from specified unlawful activities. Both

79 *Id.*

80 15 U.S.C. § 78ff(c)(3).

81 *Id.* §§ 78dd-2(d), 78dd-3(d).

82 *Id.* § 78u(d)(1).

83 Press Release, SEC, 'Credit Suisse to Pay Nearly \$475 Million to US and UK Authorities to Resolve Charges in Connection with Mozambican Bond Offerings' (19 October 2021), <https://www.sec.gov/news/press-release/2021-213>.

84 Justice Manual § 9-47.120.

85 *Id.*



sections target proceeds resulting from specified illegal activities such as bribery of a foreign official, fraud by or against a foreign bank, and certain smuggling and export control violations, to name a few.<sup>86</sup>

Any violation of Section 1956 is punishable by imprisonment for not more than 20 years, a fine of up to US\$500,000 or twice the value of the property involved, or both. In addition, such violations can incur a civil penalty up to the greater of US\$10,000 or the value of the property involved in the offence, plus asset forfeiture. For Section 1957, the maximum penalty is 10 years' imprisonment or a fine of up to twice the value of the property involved, or both.<sup>87</sup> In early 2022, a former Goldman Sachs director was convicted by jury of a money laundering conspiracy, among other charges, for misappropriating more than US\$2.7 billion from 1MDB.<sup>88</sup>

The 2021 National Defense Authorization Act introduced further reforms to anti-money laundering laws in the United States, which include requirements for additional beneficial ownership information with the aim of eliminating shell companies and specific disclosures about ultimate beneficial owners. The Act greatly increased corporate and individual penalties for repeat violations of federal anti-money laundering laws, including civil penalties of triple the profit realised from the activities or double the maximum penalty for the violation.<sup>89</sup> Individuals may also be subject to damages based on profit realised pursuant to the violation – and where such violations are deemed 'egregious', individuals may be precluded from serving on the board of a US financial institution for a decade.<sup>90</sup>

## Cryptocurrency

## 26.7.4

Cryptocurrencies create both opportunities and legal challenges such as fraud, insider trading, market manipulation, money laundering, unregistered exchanges and difficulty of tracing virtual funds. The recent unprecedented rise in the global use of cryptocurrencies has brought significant focus to the technology at both federal and state levels. In the past two years alone, many US states have introduced laws defining and regulating cryptocurrency, and at times using cryptocurrencies as a tool for economic opportunities.<sup>91</sup>

US enforcement agencies, including the SEC, Commodity Futures Trading Commission (CFTC) and the DOJ, have already demonstrated a strong

<sup>86</sup> 18 U.S.C. §§ 1956–1957.

<sup>87</sup> *Id.*

<sup>88</sup> Press Release, DOJ, 'Former Goldman Sachs Investment Banker Convicted in Massive Bribery and Money Laundering Scheme' (22 April 2022), <https://www.justice.gov/opa/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering-scheme>.

<sup>89</sup> 31 U.S.C. § 5321(f).

<sup>90</sup> *Id.*, §§ 5321(g) & 5322(e).

<sup>91</sup> See e.g., Executive Order N-9-22, Office of the Governor of California (4 May 2022), <https://www.gov.ca.gov/wp-content/uploads/2022/05/5.4.22-Blockchain-EO-N-9-22-signed.pdf>.

interest in the area, particularly in light of the global cryptocurrency crash in 2022. From January to June 2022 alone, the DOJ criminally charged several cryptocurrency executives, brokers and promoters in cases alleging more than US\$2 billion in losses accompanied by parallel civil actions with the SEC and CFTC.<sup>92</sup> In February 2022, US law enforcement seized over US\$3.6 billion in cryptocurrency linked to the 2016 hack of Bitfinex – the DOJ's largest financial seizure ever.<sup>93</sup> And in August 2022, the SEC charged 11 people with creating a fraudulent crypto pyramid and Ponzi scheme that raised US\$300 million from investors globally.<sup>94</sup>

In September 2022, the US Treasury Department and other federal agencies submitted nine reports to President Biden that urge regulators, including the SEC and CFTC, to 'aggressively pursue investigations and enforcement actions against unlawful practices in the digital assets space' as well as issue 'new guidance and rules to address current and emergent risks'.<sup>95</sup>

Given the increasing risk of abuse related to cryptocurrencies, US authorities will likely continue to prioritise its regulation, and the trend in increasing fines and penalties will likely continue as enforcement ramps up.

## 26.7.5 Export controls and trade sanctions

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) administers and enforces most US economic sanctions. The US Commerce Department's Bureau of Industry and Security and DOJ National Security Division also enforce some aspects of US sanctions. Generally, these sanctions, such as the blocking of assets and trade restrictions, are used to accomplish national security and foreign policy objectives.

The sanctions can be either comprehensive for a jurisdiction or targeted to particular individuals (known as specially designated nationals or SDNs) and entities, such as the sanctions imposed on certain persons and companies in response to Russia's 2022 invasion of Ukraine,<sup>96</sup> or on one Chinese government

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92 Crypto Enforcement, DOJ, (2022), <https://www.justice.gov/criminal-fraud/crypto-enforcement>.

93 Press Release, DOJ, 'Two Arrested for Alleged Conspiracy to Launder \$4.5 Billion in Stolen Cryptocurrency' (8 February 2022), <https://www.justice.gov/opa/pr/two-arrested-alleged-conspiracy-launder-45-billion-stolen-cryptocurrency>.

94 Press Release, SEC, 'SEC Charges Eleven Individuals in \$300 Million Crypto Pyramid Scheme' (1 August 2022), <https://www.sec.gov/news/press-release/2022-134>.

95 Fact Sheet: White House Releases First-Ever Comprehensive Framework for Responsible Development of Digital Assets, White House (16 September 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/16/fact-sheet-white-house-releases-first-ever-comprehensive-framework-for-responsible-development-of-digital-assets/>.

96 Fact Sheet: United States, G7 and EU Impose Severe and Immediate Costs on Russia, White House (6 Apr 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/06/fact-sheet-united-states-g7-and-eu-impose-severe-and-immediate-costs-on-russia/>; Fact Sheet: United States Takes Further Actions to Counter Sanctions Evasion by Russia, White House (2 June 2022), <https://www.whitehouse.gov/briefing-room/>

entity and specific officials pursuant to the global Magnitsky Human Rights Accountability Act.<sup>97</sup>

Asset seizure in the United States and internationally operates as one method for sanctions enforcement. For example, in 2022, the DOJ and Treasury Department launched two task forces – the transatlantic Russian Elites, Proxies and Oligarchs Task Force and Task Force KleptoCapture – to freeze more than US\$30 billion in sanctioned Russians' assets, including financial accounts, real estate and high-value goods (including airplanes and yachts).<sup>98</sup> In 2022, the DOJ charged a Russian SDN with violating US sanctions after he hired a US citizen to operate and acquire television networks and transmit US\$10 million in US-based investments to Greece.<sup>99</sup>

Fines for violations of the sanctions regulations can be significant. From January to August 2022, OFAC settled nine enforcement actions, with civil penalties totalling more than US\$12 million.<sup>100</sup> And in 2021, it settled 20 enforcement actions for nearly US\$21 million.<sup>101</sup>

Criminal penalties for wilful violations of OFAC sanctions can include fines up to US\$1 million per violation or imprisonment for up to 20 years, or both.<sup>102</sup> The government can also pursue fines and penalties against an organisation of up to US\$500,000 or twice the pecuniary gain or loss derived from

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statements-releases/2022/06/02/fact-sheet-united-states-takes-further-actions-to-counter-sanctions-evasion-by-russia/.

97 Press Release, Dep't of the Treasury, 'Treasury Targets Iranian-Backed Hizballah Officials for Exploiting Lebanon's Political and Financial System' (9 July 2019), <https://home.treasury.gov/news/press-releases/sm724>.

98 Press Release, DOJ, 'Russian Elites, Proxies, and Oligarchs Task Force Joint Statement' (29 June 2022), <https://www.justice.gov/opa/pr/russian-elites-proxies-and-oligarchs-task-force-joint-statement>; Press Release, DOJ, 'Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture' (2 March 2022), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture>; Press Release, DOJ, 'United States Obtains Warrant for Seizure of Two Airplanes of Russian Oligarch Roman Abramovich Worth Over \$400 Million' (6 June 2022), <https://www.justice.gov/opa/pr/united-states-obtains-warrant-seizure-two-airplanes-russian-oligarch-roman-abramovich-worth>; Press Release, DOJ, '\$90 Million Yacht of Sanctioned Russian Oligarch Viktor Vekselberg Seized by Spain at Request of United States' (4 April 2022), <https://www.justice.gov/opa/pr/90-million-yacht-sanctioned-russian-oligarch-viktor-vekselberg-seized-spain-request-united>.

99 Press Release, DOJ, 'Russian Oligarch Charged with Violating US Sanctions' (6 April 2022), <https://www.justice.gov/opa/pr/russian-oligarch-charged-violating-us-sanctions>.

100 Civil Penalties and Enforcement Information, US Dep't of Treasury, <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

101 2021 Enforcement Information, US Dep't of Treasury, <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information/2021-enforcement-information>.

102 See e.g., 50 U.S.C. § 1705(c).

the offence,<sup>103</sup> as well as forfeiture.<sup>104</sup> Further, penalties for violations of the Trading with the Enemy Act, which provides the statutory authority for the Cuba sanctions, can be up to US\$90,743 per violation (which may be adjusted for inflation), and criminal penalties can reach US\$1 million.<sup>105</sup> Financial penalties for violations of the International Emergency Economic Powers Act, which underlies other sanctions programmes, are also possible; associated civil penalties can be up to US\$250,000 or twice the amount of the unlawful transaction, and criminal penalties permit a fine of up to US\$1 million and imprisonment for up to 20 years.<sup>106</sup>

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103 18 U.S.C. § 3571.

104 18 U.S.C. § 981.

105 31 C.F.R. § 501.701; Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act, 83 Fed. Reg. 46347 (12 September 2018) (extending the expiration of Cuba sanctions pursuant to the Trading with the Enemy Act until September 2019).

106 50 U.S.C. § 1705; 31 C.F.R. § 501; Christopher A Casey, Ian F Fergusson, Dianne E Rennack and Jennifer K Elsea, Cong. Rsch. Serv., R45618, The International Emergency Economic Powers Act: Origins, Evolution, and Use (2019), <https://sgp.fas.org/crs/natsec/R45618.pdf>.

# Appendix 1

## About the Authors of Volume I

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#### **Cooley LLP**

Matthew Kutcher is a former federal prosecutor with significant experience handling complex criminal cases, particularly involving fraud and corruption. Matthew developed 15 years of experience representing corporations, accounting firms and investment banks, and their officers, directors and executives in white-collar, FCPA, EU and US trade sanctions, export controls, securities fraud and anti-competition proceedings before the DOJ, the SEC and other federal agencies. Matthew's background includes leading domestic and cross-border investigations resulting from regulatory and statutory violations, money laundering, corruption and fraud, environmental and whistleblower claims across numerous industries. Matthew helps clients navigate effectively through complex investigations and criminal actions brought in state and federal courts. He has a proven track record of resolving high-stakes issues at the investigative stage, often before proceedings are initiated, but he is always ready to take a case to trial.

Matthew's practice also encompasses litigating civil cases in trials and appeals, where he has successfully defended clients in a range of class actions, shareholder litigation and general commercial disputes. He has also advised clients on anti-corruption, trade sanctions and securities law compliance programmes, including identifying risks associated with FCPA, trade sanctions and other global commercial transactions such as mergers, acquisitions and asset sales. In addition, Matthew has routinely provided training programmes for clients around corporate compliance best practices in the energy, defence, aerospace and international sports industries.

## **Alexandra Eber**

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Alexandra Eber concentrates her practice on complex commercial and securities litigation, white-collar defence and internal investigations. She has experience representing corporations, financial institutions and individuals facing investigations from a variety of state and federal government entities, as well as investigating self-identified issues and whistleblower complaints. She also handles a wide variety of commercial and securities litigation matters in state and federal courts. Alexandra maintains an active *pro bono* practice.

## **Matt K Nguyen**

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Matt Nguyen's practice centres on strategic advocacy, with a focus on appellate litigation and government investigations. As the son of Vietnam War refugees and as a commissioned judge advocate in the US Army Reserve, Matt is also committed to Cooley's *pro bono* practice, through which he has represented clients in impact litigation concerning constitutional governance, gun violence prevention, voting rights, immigrants' rights, criminal justice reform and racial justice. Over the past decade, he has also advised elected leaders – the Biden–Harris campaign and transition, the then Senator Kamala Harris, Speaker Nancy Pelosi, Secretary Jennifer Granholm, Governors Jerry Brown and Gavin Newsom, and Justice Goodwin Liu – on cutting-edge legal and policy issues.

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Wazhma Sadat provides legal and strategic advice to clients in high-stakes business litigation, from early stages of investigations to trial and appellate litigation. She has represented clients in civil and criminal matters before US government entities, including the Department of Justice, the Securities and Exchange Commission and the Financial Industry Regulatory Authority.

Before law school, Wazhma worked with the US Department of State and the US Agency for International Development in Afghanistan and co-founded an online education start-up. Wazhma earned her BA in Global Affairs from Yale College and her JD from Yale Law School, where she received the Paul & Daisy Soros Fellowship for New Americans and the McKinsey Achievement Award.

During law school, Wazhma served as the managing editor of submissions for the Yale Journal of International Law. Before joining Cooley, Wazhma worked as a law fellow at Yale University's Office of the General Counsel and clerked for Justice Steven D Ecker of the Connecticut Supreme Court.

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Kimberley Bishop represents clients in complex civil litigations, securities litigations, white-collar defence and investigations and appeals. She advises clients at all stages of litigation, including fact development, discovery, deposition preparation, motion practice, trial and appeals. She also has an active *pro bono* practice.

Before joining Cooley, Kimberley served as a judicial intern for the Honorable Richard G Stearns of the US District Court for the District of Massachusetts. While attending Boston University School of Law, she served as the editor-in-chief of the *Boston University Law Review*; competed in the Homer Albers Prize Moot Court Competition (awards for best team and best petitioner's brief); and served as a student attorney for the Wrongful Convictions Practicum. She was also involved with and held leadership positions in the Women's Law Association and the First Generation Professionals Initiative. She was a recipient of the Dr John Ordronaux Prize, awarded to a member of the graduating class for the most exemplary academic performance and leadership.

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