

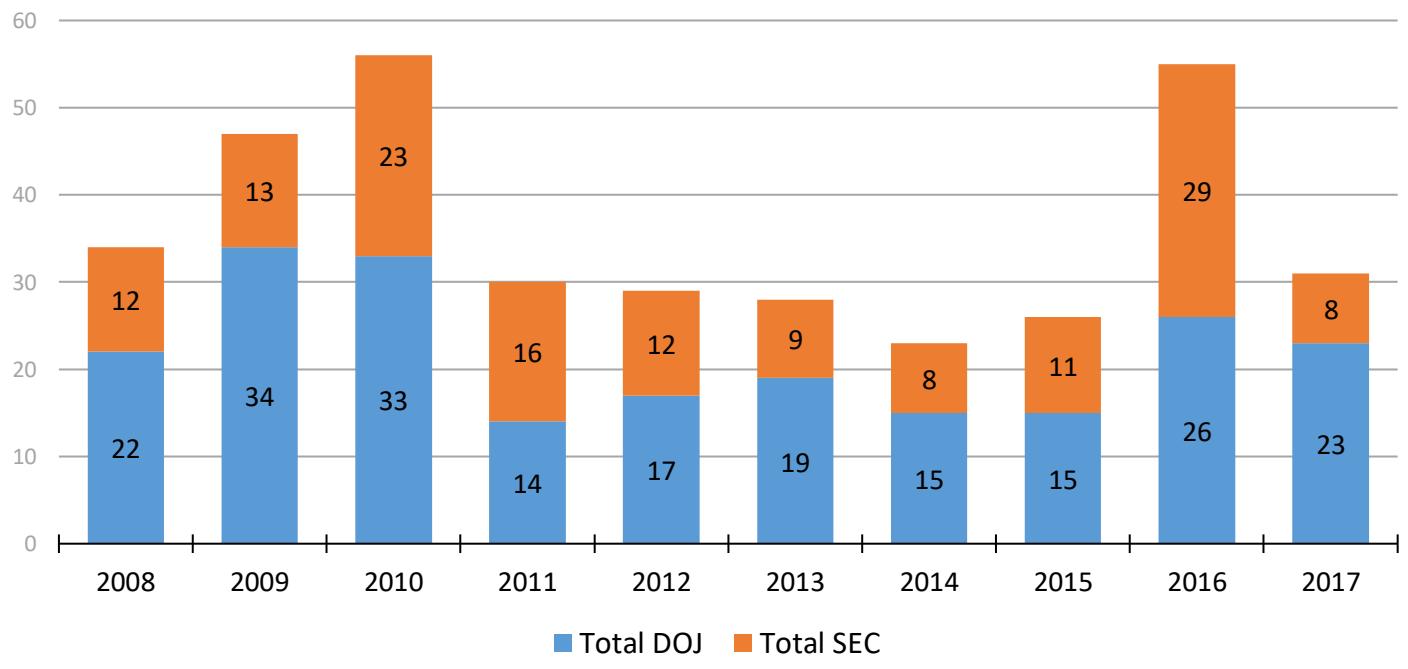
## 2017 FCPA Year in Review

After a slow start, the Securities and Exchange Commission (SEC) and Department of Justice (DOJ) ramped up enforcement of the Foreign Corrupt Practices Act (FCPA) in the second half of 2017, resulting in three of the largest monetary sanctions in FCPA history. U.S. authorities have continued the trend of international cooperation, and three entity groups resolved FCPA claims in 2017 through use of a global settlement. For the first time in several years, misconduct in China was not the primary target of FCPA regulators. The DOJ made the FCPA Pilot Program introduced in 2015 permanent and incorporated its provisions into the DOJ's manual for prosecuting corporations. The 2017 Year in Review provides an overview of some of the more notable trends and statistics to emerge from last year's FCPA enforcement activity.

### Enforcement Statistics

After a dramatic upsurge in FCPA enforcement activity in 2016, the number of enforcement actions initiated last year returned to a level slightly below the ten-year average, but more typical of the last few years.

Fig. 1, Enforcement Actions per Year

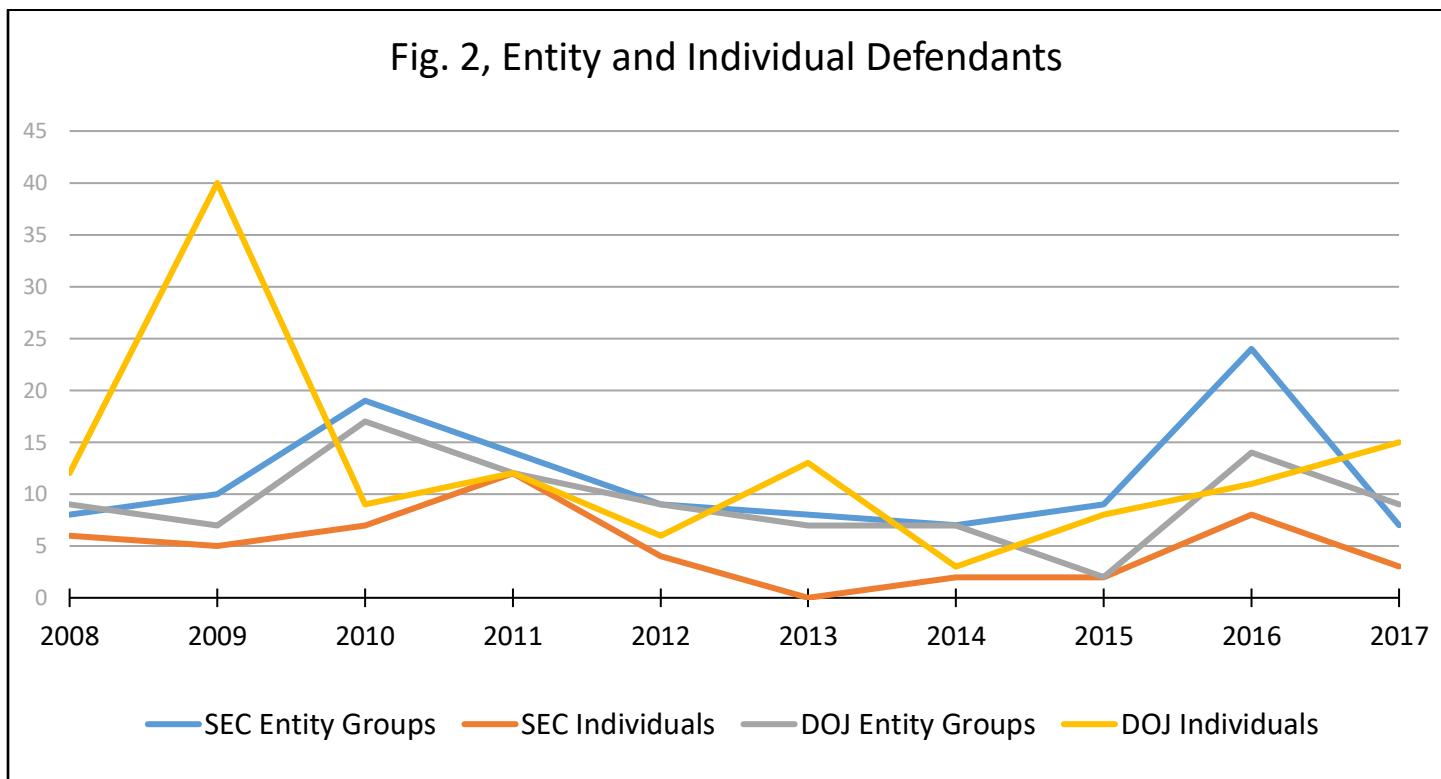


There are many ways to track FCPA enforcement activity. Figure 1 tracks activity by court docket or administrative proceeding file number, where possible. In 2017, the DOJ and SEC initiated 31 FCPA-related enforcement actions, representing a 43 percent decrease from 2016. The year over year decline in enforcement activity is attributable almost entirely to a reduction in enforcement actions initiated by the SEC. While DOJ enforcement activity declined by 10 percent from 2016 to 2017, SEC enforcement activity declined by 70

percent, suggesting that the spike in SEC enforcement activity in 2016 may well have been an aberration rather than the new normal.

### **Entity and Individual Defendants**

Figure 2 depicts the number of entity groups (or groups of affiliated entities, such as parents and their subsidiaries and joint ventures) and individuals subject to FCPA-related enforcement activity over the last ten years. In 2017, the SEC sued seven entity groups and three individual defendants for FCPA-related violations, while the DOJ charged nine entity groups and 15 individual defendants. Of the 13 separate entity groups implicated in FCPA enforcement actions in 2017, only three were prosecuted or sued by both the DOJ and SEC.

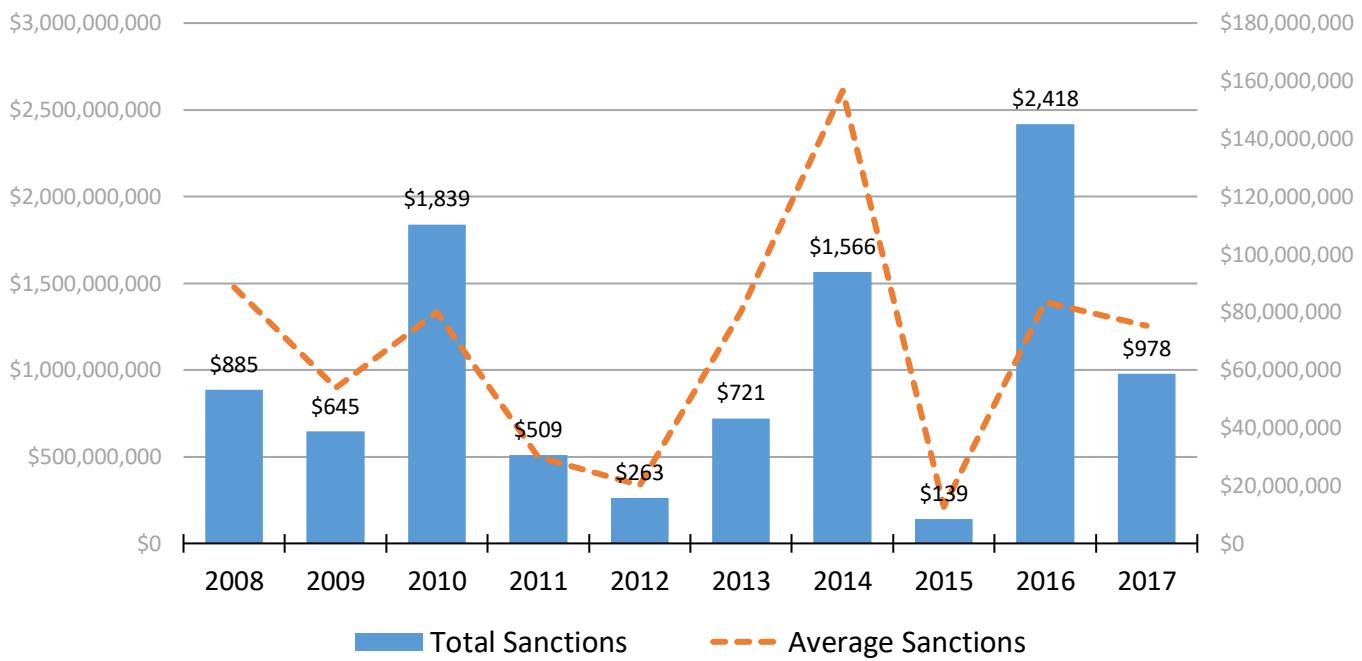


Individuals comprised over half of all FCPA defendants in 2017, compared to one-third in 2016. The number of individuals criminally prosecuted by the DOJ for FCPA-related offenses also increased between 2016 and 2017, both in absolute numbers and as a percentage of all FCPA-related criminal prosecutions. Employees or agents of Embraer, Keppel Offshore & Marine Ltd. (a subsidiary of publicly traded Keppel Corporation), Rolls-Royce and its subsidiaries, and SBM Offshore NV and its subsidiary, were among those criminally prosecuted in 2017.

### **Sanctions**

With 2017's decrease in enforcement activity came a concomitant decrease in the total sanctions paid by FCPA defendants.

**Fig. 3, Total and Average Corp. Sanctions (in Millions)**



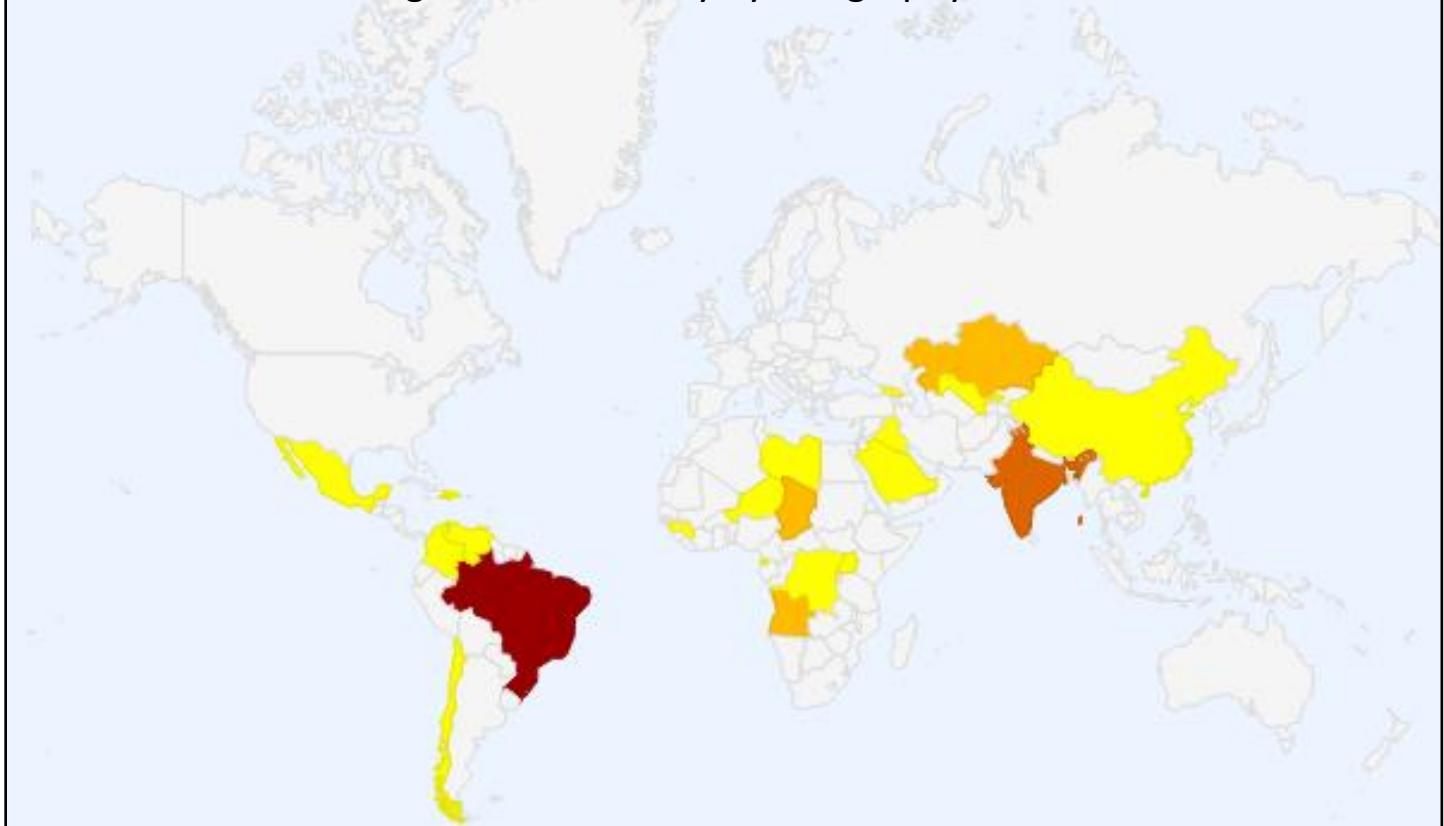
Monetary sanctions imposed on entity groups in FCPA-related enforcement actions initiated in 2017 totaled almost \$1 billion, with a per group average of just over \$75 million. The relatively high average sanction stems in large part from Telia Company AB, which paid over \$483 million in sanctions to the SEC and DOJ. Excluding Telia, the average sanction imposed on entity groups in 2017 drops to a more modest \$41.2 million.

Despite last year's dip in total sanctions, global settlements involving three entity groups – Keppel Corporation (\$422 million), SBM Offshore N.V. (\$478 million), and Telia Company AB (\$965 million) – mark three of the largest resolutions of FCPA-related claims in history. For purposes of aggregating sanctions in Figure 3, only those portions of a global resolution that are payable to U.S. authorities are included.

## Geography

The focus of FCPA enforcement activity in 2017 appears to have shifted away from Asia and towards Africa and Latin America.

**Fig. 4, FCPA Activity by Geography, 2017**



Regulators identified 19 common bribery schemes among the 31 enforcement actions filed in 2017. When grouped by common bribery scheme, Brazil—with four FCPA-related schemes—snatched the top spot away from China. India, Angola, Chad, and Kazakhstan round out the five countries most frequently implicated in last year’s FCPA enforcement activity. With respect to regions, Africa was most frequently implicated in FCPA-related bribery schemes (42%), followed by Latin America (32%) and Asia (26%).

U.S. authorities continued to cooperate closely with officials in other countries to pursue their anti-corruption agenda. Last year, press releases issued by the SEC and DOJ noted foreign assistance in the prosecution of 42 percent of all FCPA-related enforcement actions, and international cooperation resulted in three of the largest global resolutions of FCPA claims to date. The Dutch secured as much as half of the sanctions in each of the enforcement actions against SBM Offshore N.V. and Telia Company AB. Keppel Offshore & Marine paid half of the sanctions imposed in enforcement actions initiated by the DOJ to Brazil and a quarter each to Singapore and the U.S.

### **Investigations**

U.S. authorities are currently investigating at least 66 entity groups for possible FCPA-related violations. The SEC or DOJ appear to have initiated investigations against at least 20 entity groups in 2017.

According to publicly available information disclosed in SEC filings and charging and settlement documents, last year the SEC resolved at least 15 FCPA-related investigations, and the DOJ resolved at least 25. At the SEC, eight investigations ended in an enforcement action, and at least seven were concluded with no further action. The breakdown of concluded investigations at the DOJ is slightly more complicated. Fourteen DOJ investigation resulted in enforcement actions filed in 2017, including the two declinations with disgorgement

announced last year. The DOJ also concluded at least 11 investigations with no further action. At least three of the companies that the DOJ investigated but declined to prosecute were sued for FCPA offenses in stand-alone SEC actions in 2017.

### **The FCPA Corporate Enforcement Policy**

On April 5, 2016, the DOJ announced the launch of a new FCPA pilot program designed to promote individual accountability and to increase transparency in charging decisions. On November 29, 2017, Deputy Attorney General Rod Rosenstein announced a revised [FCPA Corporate Enforcement Policy](#) that made many aspects of the Pilot Program permanent and incorporated its provisions into the U.S. Attorneys' Manual. The DOJ enhanced the enforcement policy in three primary ways: first, a company that satisfies the standards of self-disclosure, cooperation, and remediation set out by the DOJ, and absent certain aggravating factors, can presume that the agency will resolve the company's case through a declination; second, where a company satisfies all of the requisite standards but aggravating circumstances preclude a declination, then the DOJ will recommend a 50 percent reduction off the bottom end of the Sentencing Guidelines fine range; and third, the new FCPA Corporate Enforcement Policy will provide details for how the DOJ will evaluate corporate compliance programs.

To date, the DOJ has publicly disclosed seven declination letters attributable to the Pilot Program and new FCPA Corporate Enforcement Policy.

### **Looking Ahead**

At the start of 2017, the future of FCPA enforcement seemed uncertain. Both President Donald Trump and SEC Chairman Jay Clayton had independently expressed disapproval of the law before taking office, and U.S. authorities initiated only a handful of FCPA-related enforcement actions in the first six months of the new administration. Nonetheless, enforcement activity increased considerably in the second half of the year, suggesting that the lull in activity may have been nothing more than that—a lull. Moreover, the number of open FCPA investigations, combined with stated commitments by the [DOJ](#) and [SEC](#) to continue to aggressively enforce the FCPA, suggests that enforcement activity will remain robust in 2018.