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H1 2019: Latin America Enforcement Observations

The U.S. Justice Department, the U.S. Securities and Exchange Commission, and their enforcement partners throughout Latin America remain focused on actively investigating corruption activities and bringing enforcement actions across the region.

FBI INSTALLS NEW LATIN AMERICA-FOCUSED ANTI-CORRUPTION TEAM IN MIAMI

After announcing¹ in March 2019 the addition of another “International Corruption Squad” (ICS) in Miami, the U.S. Federal Bureau of Investigation (FBI) is poised to continue and potentially ramp up its anti-corruption work in South Florida, projecting into nearby and closely connected Latin American jurisdictions.

In the announcement of the Miami ICS, the FBI noted that “[i]nvestigations conducted by these squads generally focus on criminal acts occurring outside U.S. borders but having a nexus to the U.S. The squads routinely partner with foreign law enforcement and FBI legal attaché offices as a force multiplier to combat international corruption matters.”² Recent convictions in Miami related to bribes paid to PetroEcuador officials have already been attributed to the investigative work of the ICS team in Miami.³

The Miami-based team supplements existing groups in New York, Los Angeles, and Washington, D.C., and is expected to further “enable a focus on international corruption matters without draining resources from the field.”⁴

A HEALTHCARE FOCUSED “LAVA JATO” UP NEXT? U.S.-BRAZIL COOPERATION CONTINUES

Last month, Reuters⁵ and other news outlets began reporting that, according to Brazilian law enforcement officials, the U.S. Federal Bureau of Investigation is currently investigating allegations that a number of prominent U.S. pharmaceutical and medical device manufacturers made corrupt payments in connection with the sale of medical equipment in



Brazil. The investigation may involve more than 20 companies, which allegedly paid public officials to obtain contracts with public health authorities in Brazil.

Regarding sharing of evidence between U.S. and Brazilian authorities, Brazilian federal prosecutor, Marisa Ferrari stated: “We always share information about this investigation with the FBI. They ask for documents, we forward them and they are also investigating.” Ferrari added that Brazilian authorities “have already received a lot of material from the SEC [and] Department of Justice and are in permanent contact with them.”⁶

MEXICO'S AMLO: BEGINNING TO MAKE HIS MARK?

Following his installation as President of Mexico in December 2018, Andres Manuel Lopez Obrador (or “AMLO”) has initiated significant changes to the country’s political landscape and the national law enforcement regime.

Mexico recently confirmed its inaugural Chief Prosecutor, a political appointee who will lead the new independent law enforcement agency for a nine-year term. The initial office holder, Alejandro Gertz Manero, announced on May 6, 2019, that his office would begin a criminal case against Odebrecht “within 60 days.”⁷ In 2016, as part of criminal resolutions with Brazilian, Swiss, and American authorities, Odebrecht admitted to paying \$10.5 million in bribes to Mexican officials. Mexican authorities, under the government of then-president Enrique Peña Nieto, had not pursued formal charges.

A few weeks after indicating that charges against Odebrecht would be forthcoming, Mexican law enforcement officials announced the filing of bribery and tax charges against Emilio Lozoya Austin, the former head of Pemex, Mexico’s state-run oil company.⁸ Although the timing of the charges may suggest a connection to Odebrecht-related corruption within Mexico, Gertz Manero clarified the charges against Lozoya had “nothing to do” with Odebrecht.⁹

Gertz Manero has also begun to fill key roles within the Prosecutor’s Office. In particular, María de la Luz Mijangos Borja was nominated and confirmed to serve the first Anti-Corruption Prosecutor. Mijangos Borja also serves on the Coordinating Committee of the National Anticorruption System, enacted in 2016. Coinciding with her appointment, revisions to Mexico’s criminal code that AMLO had previously pushed came into effect. The new laws address a wide swath of corrupt conduct, including bribery, intimidation, abusive exercise of authority, influence peddling, embezzlement of public funds, and illicit enrichment.¹⁰

The changes AMLO is bringing about in the early days of his Administration owe, in part, to the Mexican public’s desire for increased corruption-related enforcement. A recent poll suggested that approximately 80% of Mexicans think that former presidents should be prosecuted and jailed for public corruption. In response, AMLO has called for a referendum to decide whether Mexico will prosecute its ex-presidents.¹¹

WHAT TO WATCH: CHS INC. SELF-DISCLOSURE TO TEST NEW DOJ POLICY

In 2017, then-U.S. Deputy Attorney General Rod Rosenstein formalized a policy intended to provide companies with incentives to self-disclose misconduct and cooperate with FCPA investigations in return for credit in FCPA cases against disclosing parties, absent certain conditions.¹² In November 2018, U.S.-based agribusiness, CHS Inc. revealed possible violations of the FCPA related to use of Mexican customs agents used in connection with inspections of grain crossing the border with the United States.¹³ Whether DOJ will decline to bring an FCPA action, in line with its new self-disclosure policy, remains to be seen, but the CHS disclosure could be an interesting test case. It can be difficult to discern the levels of self-disclosure and cooperation in any FCPA matter, so in this case and others, the industry will be watching closely to see how the lines are drawn by the U.S. authorities in determining how (or if) to assign credit.

NEXT STEPS

A dynamic political landscape and recent public comments from law enforcement confirm that anti-corruption efforts remain a priority throughout the Americas. As cooperation between enforcement officers and regulators continue,



companies and individuals should consider how best to navigate a variety of concerns. King & Spalding's Global Anti-Corruption and FCPA team is known for its extensive experience on both sides of the table and its strong network of relationships in the global enforcement community.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,100 lawyers in 20 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

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¹ Press Release, Federal Bureau of Investigation, FBI Announces New International Corruption Squad in Miami Field Office (Mar. 5, 2019), <https://www.fbi.gov/news/pressrel/press-releases/fbi-announces-new-international-corruption-squad-in-miami-field-office>

² *Id.*

³ Press Release, United States' Attorney's Office for the Southern District of Florida, Financial Advisor Pleads Guilty to Money Laundering Charge in Connection with Bribery Scheme Involving Ecuadorian Officials (Sept. 11, 2018), <https://www.justice.gov/usao-sdfl/pr/financial-advisor-pleads-guilty-money-laundering-charge-connection-bribery-scheme>

⁴ Federal Bureau of Investigation, What We Investigate – Public Corruption, <https://www.fbi.gov/investigate/public-corruption> (last visited Jun. 23, 2019)

⁵ John Fischer, *FBI opens probe into alleged kickbacks by healthcare OEMs in Brazil*, HEALTHCAREBUSINESS DAILY (May 21, 2019), <https://www.dotmed.com/news/story/47332>

⁶ *Id.*

⁷ *En 60 días se judicializará el caso Odebrecht: Gertz Manero*, FORBES MEXICO (May 6, 2019), <https://www.forbes.com.mx/en-60-dias-se-judicializara-el-caso-odebrecht-gertz-manero/>

⁸ Kirk Semple and Azam Ahmed, *Mexico Charges Former Oil Official With Bribery in Anticorruption Drive*, N.Y. TIMES (May 28, 2019), <https://www.nytimes.com/2019/05/28/world/americas/mexico-corruption-prosecution-oil-company.html>

⁹ *Investigación contra Emilio Lozoya no es por Odebrecht: Gertz Manero*, EL SOL DE MEXICO (May 29, 2019), <https://www.elsoldemexico.com.mx/mexico/justicia/investigacion-contra-emilio-lozoya-ex-director-pemex-no-es-por-odebrecht-gertz-manero-fgr-3689385.html>

¹⁰ Leyes Secundarias del Sistema Nacional Anticorrupción, https://www.gob.mx/cms/uploads/attachment/file/145706/2016_07_18_VES_Decreto_por_el_que_se_reforma_el_C_digo_Penal.pdf (last visited Jun. 23, 2019)

¹¹ Carta Paramétrica: El Presidente y la corrupción, http://www.parametria.com.mx/carta_parametrica.php?cp=5076 (last visited Jun. 23, 2019)

¹² Rod Rosenstein, Deputy Attorney General, U.S. Dep't of Justice, Address at 34th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2017), <https://www.justice.gov/opa/speech/deputy-attorney-general-rostein-delivers-remarks-34th-international-conference-foreign>

¹³ CHS Inc., Annual Report (Form 10-K) (Dec. 3, 2018), <https://www.sec.gov/Archives/edgar/data/823277/000082327718000065/chscp10k83118.htm>