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SPECIAL MATTERS AND GOVERNMENT INVESTIGATIONS

For more information,
contact:

Brandt Leibe

+1 713 751 3235

bleibe@kslaw.com

Grant Nichols

+1 512 457 2006

gnichols@kslaw.com

Joel Crespo

+1 202 626 8975

joel.crespo@kslaw.com

Luke Fields

+1 202 626 2399

lfields@kslaw.com

King & Spalding

Houston, TX

1100 Louisiana Street

Houston, TX 77002-5213

Tel: +1 713 751 3200

Washington, D.C.

1700 Pennsylvania Avenue, NW

Washington, D.C. 20006-4707

Tel: +1 202 737 0500

Q3 2019: Latin America Enforcement Review

Enforcement authorities throughout the United States and the Americas continue to aggressively investigate fraud and corruption across the region in the third quarter of 2019. Below, we highlight some recent developments and update our prior observations from the first the half of this year:

SEC CHAIRMAN VOICES FRUSTRATIONS WITH ANTI-CORRUPTION ENFORCEMENT AROUND THE WORLD

In a speech delivered on September 9, 2019, the Chairman of the U.S. Securities and Exchange Commission (“SEC”) observed that the failure of other countries to enforce foreign anti-bribery and anti-corruption laws may put U.S. companies at a competitive disadvantage to foreign firms. Chairman Clayton argued that he has not seen “meaningful improvement” in the effectiveness of American efforts. In fact, he added, “other countries may be incentivized to play, and I believe some are in fact playing, strategies that take advantage of our laudable efforts.”¹

The Chairman noted that he did not intend to change the SEC’s Foreign Corrupt Practices Act (“FCPA”) enforcement posture with his observation but did note that the dynamic remains top-of-mind when engaging with his counterparts around the world. Although the Chairman did not identify any particular Latin American countries, efforts to even the playing field on anticorruption enforcement increasingly seem to be a part of the conversation in U.S. relations with Latin America under the Trump administration.

One example of this focus is the United States-Mexico-Canada Agreement (“USMCA”). In September 2018, the U.S., Canada, and Mexico agreed to a new free trade agreement that contains key anti-corruption provisions.² The USMCA remains unsigned by any country, but the expectation is that it will replace NAFTA on January 1, 2020. The USMCA is likely to even the playing field for American companies operating in Mexico, where the anti-corruption provisions are likely to have the most impact since it will require some changes in Mexican law to



bring anti-corruption enforcement in line with that of the United States and Canada.

RECENT AIRLINE DISCLOSURES KEEP THE LATAM AVIATION INDUSTRY IN THE SPOTLIGHT

On August 13, 2019, Avianca Airlines, Colombia's national airline, disclosed an internal investigation into potential violations of the FCPA or other potentially applicable anti-corruption laws in the U.S. and abroad.³ The disclosure states that the business practice under investigation may have involved "members of senior management, as well as certain members of the board of directors" providing things of value, which are believed to be "free and discounted airline tickets and upgrades, to government employees in certain countries."⁴

The disclosure follows similar investigations into the business practices of several aviation-related Latin American companies. Brazil's Gol Intelligent Airlines reported possible violations in 2017⁵ and Chile's LATAM airlines settled FCPA charges in 2016 paying out a \$12.75 million criminal penalty.⁶

In some cases, aviation companies simply operating in LatAm have also been hit with FCPA probes. In 2014, Dallas Airmotive Inc. admitted to various FCPA violations in Brazil and Argentina and ultimately paid a \$14 million criminal penalty.⁷ In 2012, Bizjet International agreed to pay an \$11.8 million criminal penalty to resolve charges of violating the FCPA and bribing government officials in Mexico and Panama.⁸

The recent enforcement wave in the LatAm aviation industry may be a sign that the industry and authorities are becoming aware of gaps in internal control policies that do not account for perks and incentives that the industry has provided historically.

DOJ'S EFFORTS IN PETROECUADOR CASE RESULT IN GUILTY PLEAS

The U.S. Department of Justice ("DOJ") is continuing its efforts to prosecute bribery of employees of Ecuador's state-owned PetroEcuador. After securing the seventh public guilty plea in April 2019 against individuals involved in schemes to bribe PetroEcuador officials,⁹ DOJ appears to have turned its focus to Frank Roberto Chatburn Ripalda—the only defendant to plead not guilty.¹⁰ In July 2019, Chatburn Ripalda suffered several legal setbacks in his criminal case, including the denial of his request to dismiss a money laundering count and his request to suppress secret recordings. Chatburn Ripalda is now awaiting trial.

Meanwhile, DOJ has indicted even more individuals allegedly involved in the PetroEcuador case. In May 2019, two Ecuadorian businessmen, Armengol Alfonso Cevallos Diaz and Jose Melquiades Cisneros Alarcon, were indicted in Miami for their alleged role in bribery at PetroEcuador.¹¹ The two are accused of using intermediary companies to funnel approximately \$4.4 million in bribes to PetroEcuador officials. Cisneros Alarcon pleaded guilty to one count of conspiracy to launder money and is awaiting sentencing. Cevallos Diaz is awaiting trial in December 2019.

DOJ's pursuit of individuals has proven effective in the PetroEcuador cases. This case, which continues to snowball, demonstrates that U.S. authorities continue to pursue enforcement of anti-corruption laws against foreign nationals.

PERU DOUBLES DOWN ON ITS PURSUIT OF ODEBRECHT-LINKED CORRUPTION

Peru has continued its efforts to investigate and prosecute corruption tied to Odebrecht. As of mid-August 2019, Peruvian prosecutors had referred six cases to Peru's special Operation Car Wash Task Force. In July 2019, prosecutors raided the home of former first lady of Peru Nadine Heredia (2011-2016), and two former energy ministers in search of documents related to the construction of the Gasoducto Sur pipeline. In the same month, Peru's former president, Alejandro Toledo Manrique (2001-2006), was arrested in the U.S. following an extradition request from Peru and was later denied bail while awaiting his extradition hearing in the U.S.¹²

In all, four former Peruvian presidents have been accused of taking bribes from Odebrecht.¹³ Former Peruvian presidents Pedro Pablo Kuczynski Godard (2016-2018) and Ollanta Humala Tasso (2011-2016), are currently under



arrest in Peru. Former Peruvian president Alan Garcia Perez (2006-2011) killed himself in April 2019 as police came to his home to detain him.¹⁴ And former president Toledo Manrique (2001-2006) is currently under arrest in the United States awaiting an extradition hearing.

Peru's competition authority has also recently published new compliance and whistleblower guidelines making them the first Latin American country to do so. More than other Latin American countries, Peru has doubled down on its efforts to enforce anti-corruption laws and has shown little reluctance to bring prominent political figures to justice.¹⁵

MEXICO CONTINUES BUILDING ITS ANTI-CORRUPTION ENFORCEMENT ENVIRONMENT

The Mexican government has continued its marquee prosecution of high-ranking business executives while strengthening the tools prosecutors have to fight corruption. In particular, these efforts have been evidenced in the authorities' ongoing efforts to pursue the case against Emilio Lozoya Austin, the former CEO of Pemex, Mexico's state-run oil company. Lozoya Austin was charged in May 2019 with bribery and tax-related offenses.¹⁶

Recently, in July 2019, Mexican authorities have seized a holiday home¹⁷ belonging to Lozoya's wife and issuing an arrest warrant for Lozoya Austin, his wife, two other members of his family, and his real estate agent in relation to money transfers made to a shell company allegedly setup by Odebrecht.¹⁸ Later in July, Lozoya Austin's mother was arrested in Germany on charges of money laundering based on her receiving a \$155,000 deposit in her bank account.¹⁹

Perhaps as a sign of things to come, the Mexican government has passed a law authorizing seizure and sale of unexplained corporate assets. The new law allows the Mexican government to transfer ownership of any property derived or presumptively derived from illegal activities without any indemnity to its owner.

U.S. AND BRAZILIAN AUTHORITIES CONTINUE TOUGH ENFORCEMENT IN BRAZIL

The Operation Car Wash probe continues full steam ahead in Brazil. In early July, Brazil's Federal Prosecution Service ("MPF") charged 11 individuals with corruption and money laundering for receiving kickbacks from Odebrecht. Among those charged, a former governor and his chief of staff stand accused of accepting campaign financing and bribes for personal enrichment in return for excluding potential competitors in a bid. Most recently, Brazil's MPF executed search warrants of the homes of ex-CEO of Braskem, the ex-chief legal officer, and a local lawyer, as part of a new phase of the Operation Car Wash investigation. Meanwhile, in July 2019, engineering company Camargo Corrêa settled allegations of Odebrecht-linked corruption for a sum of US\$366 million.²⁰ Most recently, the CEO of a Brazilian brewery turned himself in following allegations that he helped launder US\$87 million on behalf of Odebrecht.²¹

The Operation Car Wash investigation has successfully uncovered additional corruption by using leniency agreements. Information provided under leniency agreements has allowed the Administrative Council for Economic Defense ("CADE") to launch two investigations into a group of construction companies for attempting to rig bids for contracts to build World Cup stadiums and Petrobras-related construction projects. The two probes stemmed from leniency agreements made with CADE related to the Operation Car Wash probe.

On other fronts, Brazilian and U.S. authorities continue anti-corruption enforcement in Brazil that is unrelated to Operation Car Wash. EcoRodovias, a transportation company, recently paid US\$100 million to Brazilian authorities to resolve allegations of corruption and money laundering tied to a contract to build a highway. Meanwhile, other U.S. companies have disclosed DOJ and SEC investigations into potential violations of the FCPA based on activities in Brazil.



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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."

ABU DHABI	BRUSSELS	DUBAI	HOUSTON	MOSCOW	RIYADH	SINGAPORE
ATLANTA	CHARLOTTE	FRANKFURT	LONDON	NEW YORK	SAN FRANCISCO	TOKYO
AUSTIN	CHICAGO	GENEVA	LOS ANGELES	PARIS	SILICON VALLEY	WASHINGTON, D.C.

¹ Jay Clayton, Chairman, Sec. and Exch. Comm'n, Remarks to the Economic Club of N.Y. (Sept. 9, 2019), <https://www.sec.gov/news/speech/speech-clayton-2019-09-09>.

² Agreement between the United States of America, the United Mexican States, and Canada, Can.-Mex.-U.S., Nov. 30, 2018, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³ Avianca Holdings S.A. and Subsidiaries, Report of Foreign Private Issuer Pursuant to Rules 13a-16 and 15d-16 (Form 6-K), at 63 (Aug. 15, 2019).

⁴ *Id.*

⁵ Gol Intelligent Airlines, Inc., Annual Report pursuant to Section 13 or 15(d), (Form 20-F), at 82 (May 1, 2017).

⁶ Press Release, Dep't of Justice, LATAM Airlines Group Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$12.75 Million Criminal Penalty (July 25, 2016), <https://www.justice.gov/opa/pr/latam-airlines-group-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-1275>.

⁷ Press Release, Dep't of Justice, Dallas Airmotive Inc. Admits Foreign Corrupt Practices Act Violations and Agrees to Pay \$14 Million Criminal Penalty (Dec. 10, 2014), <https://www.justice.gov/opa/pr/dallas-airmotive-inc-admits-foreign-corrupt-practices-act-violations-and-agrees-pay-14>.

⁸ Press Release, Dep't of Justice, Bizjet International Sales and Support Inc. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$11.8 Million Criminal Penalty (Mar. 14, 2012), <https://www.justice.gov/opa/pr/bizjet-international-sales-and-support-inc-resolves-foreign-corrupt-practices-act>.

⁹ Judgment, United States vs. De la Paz Roman, No. 1:19-cr-20004 (S.D. Fla. Apr. 10, 2019).

¹⁰ United States vs. Chatburn Ripalda, No. 1:18-cr-20312-MGC-1 (S.D. Fla. Apr. 19, 2018).

¹¹ United States vs. Cevallos Diaz et al., No. 1:19-cr-20284 (S.D. Fla. May 9, 2019).

¹² Alexandria Sage, *Peru ex-president denied bail in U.S., wife dragged from court after outburst*, REUTERS (Sept. 12, 2019), <https://www.reuters.com/article/us-peru-corruption-toledo/peru-ex-president-denied-bail-in-us-wife-dragged-from-court-after-outburst-idUSKCN1VX2P4>.

¹³ Anthony Faiola, *The corruption scandal started in Brazil. Now it's wreaking havoc in Peru.*, WASH. POST (Jan. 23, 2018), https://www.washingtonpost.com/world/the_americas/the-corruption-scandal-started-in-brazil-now-its-wreaking-havoc-in-peru/2018/01/23/0f9bc4ca-fad2-11e7-9b5d-bbf0da31214d_story.html.

¹⁴ Harrison Smith, *Alan García, ex-president of Peru, dies at 69 after shooting himself during arrest*, WASH. POST, (Apr. 17, 2019), https://www.washingtonpost.com/local/obituaries/alan-garcia-two-term-peruvian-president-arrested-in-bribery-investigation-dies-at-69/2019/04/17/60ef6e08-611a-11e9-bfad-36a7eb36cb60_story.html.

¹⁵ Diego Salazar, *Odebrecht en Perú: un expresidente fallecido, uno internado, uno prófugo y otro sin poder salir del país*, N.Y. TIMES (Apr. 17, 2019), https://www.nytimes.com/es/2019/04/17/peru-expresidentes-corrupcion-odebrecht/?rref=collection%2Fsectioncollection%2Fnyt-es&action=click&contentCollection=nadine-heredia®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection.

¹⁶ Juan Montes, *Mexico Prepares New Charges Against Former Pemex Boss*, WALL ST. J. (Aug. 20, 2019), <https://www.wsj.com/articles/mexico-prepares-new-charges-against-former-pemex-boss-11566346498>.

¹⁷ Adry Torres, *Mexican authorities seize \$1.9 million mansion with its own private beach and stunning view of the Pacific Coast amid corruption probe of former Mexican oil chief whose wife 'bought the luxury pad with bribe money'*, DAILYMAIL.COM (July 12, 2019), <https://www.dailymail.co.uk/news/article-7241929/1-9million-oceanfront-mansion-bought-wife-former-Mexican-state-oil-company-CEO-seized.html>.

¹⁸ *Mexico issues arrest warrants for ex-Pemex CEO Lozoya, family members*, REUTERS (July 5, 2019), <https://www.reuters.com/article/us-mexico-pemex/mexico-issues-arrest-warrants-for-ex-pemex-ceo-lozoya-family-members-idUSKCN1U01N0>.

¹⁹ Lizbeth Diaz, *Mother of senior aide to Mexico's ex-president arrested in Germany*, REUTERS (July 24, 2019), <https://uk.reuters.com/article/uk-mexico-corruption/mother-of-senior-aide-to-mexicos-ex-president-arrested-in-germany-idUKKCN1UJ23M>.

²⁰ *Brazil's Camargo Correa inks 1.4 bln reais leniency deal with government*, REUTERS (July 31, 2019), <https://www.reuters.com/article/brazil-camargo-correa/brazils-camargo-correa-inks-14-bln-reais-leniency-deal-with-government-idUSL2N24W1AR>.

²¹ Mauricio Savarese, *Brazil police target brewery CEO in graft case*, AP NEWS (July 31, 2019), <https://www.apnews.com/83f7c2d879b9428f9ff2b006fbdcc17c0>.