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Q4 2019: Latin America Enforcement Review

In the fourth quarter of 2019, U.S. enforcement authorities sustained efforts to prosecute individuals violating U.S. anticorruption laws in matters related to Latin America, while authorities in Latin America, including in Brazil, Peru, and Mexico, pursued enforcement of their own, sometimes without coordinating with U.S. authorities. This review highlights these recent trends and developments.

U.S. AUTHORITIES: THE DOJ'S REACH AND WILLING COOPERATION

Prosecuting foreigners

On November 8, 2019, a federal jury in Connecticut convicted Lawrence Hoskins on six counts of violating the Foreign Corrupt Practices Act ("FCPA"), three counts of money laundering, and two counts of conspiracy, for his involvement in a scheme to bribe government officials in Indonesia.¹ Hoskins's conviction ended a saga that began with his indictment in 2013. U.S. criminal proceedings were delayed as Hoskins challenged the jurisdictional reach of the FCPA based on the fact that he never set foot in the United States and was working in France while carrying a UK passport. Despite his challenge, Hoskins was convicted for violating the FCPA by acting as an agent of a "domestic concern" – in this case, the Connecticut subsidiary for which he worked – when he helped arrange bribes for Indonesian government officials.²

Following Hoskins's conviction, the chief of the Criminal Division at the Department of Justice ("DOJ"), Brian Benczkowski, spoke about the case and stated that DOJ did not view the Hoskins prosecution as a blank check: "I want to be clear today that the Department is not looking to stretch the bounds of agency principles beyond recognition, or even push the FCPA statute towards its outer edges."³ He also warned if prosecutors were to find evidence of the use of corporate structures or agents to shield a parent company or high-level individual executives from criminal liability, the Department likely would strongly favor prosecution in those instances⁴. It remains to be seen whether the conviction will change the way U.S. prosecutors approach cases in practice, if at all, but the conviction underscores and validates, to some extent, prosecutors' notoriously broad



view of their ability to pursue enforcement in cases with very limited contacts with the United States.

ENCOURAGING SELF-DISCLOSURE OF EXPORT CONTROLS AND SANCTIONS VIOLATIONS

On December 13, 2019, the National Security Division (“NSD”) of the DOJ introduced a revised voluntary disclosure policy⁵ for export control and sanctions enforcement.⁶ Under the new policy, which is broadly in line with the DOJ Criminal Division’s FCPA Corporate Enforcement Policy, companies that fully self-disclose apparent violations directly to the counterintelligence and export control section within the NSD and remediate and cooperate with authorities will get the benefit of “a presumption that the company will receive a non-prosecution agreement and will not pay a fine, absent aggravating factors.”⁷ Unlike the FCPA Corporate Enforcement Policy, however, companies will not be offered the presumption of a declination.⁸

ENFORCEMENT EFFORTS IN BRAZIL STEMMING FROM COORDINATION AND INTERNAL EFFORTS

U.S. and Brazilian authorities continue to coordinate enforcement efforts.⁹ According to David Brassanini, the chief operations and legal attaché for the FBI in Brasília, the FBI has requested a dedicated team to deal with the sheer number of Mutual Legal Assistance Treaty applications it receives from authorities in Brazil, which is the largest requestor of information for evidence and intelligence.¹⁰ Brassanini highlighted that U.S. authorities had helped levy a US\$2.6 billion bribery settlement with construction company Odebrecht in 2016 that was divided between Brazil, US, and Swiss authorities.¹¹

Meanwhile, Brazilian authorities continue to reach resolutions stemming from Operation Car Wash investigations. In November, Brazilian authorities signed two important leniency agreements in less than two weeks. First, the Attorney General’s Office (“AGU”), the Comptroller General of the Union (“CGU”), and the construction company OAS agreed that OAS would pay nearly 2 billion Brazilian Reais to resolve bribery allegations.¹² A few days before, the same authorities reached a similar agreement with the construction company Engevix Group in which the company agreed to pay more than 500 million Brazilian Reais to settle, bringing the total number of leniency agreements signed between the CGU, AGU, and Operation Car Wash-linked businesses to 11.¹³

More recently, following Telefonica Brasil’s FCPA settlement with the U.S. Securities and Exchange Commission, CGU opened an investigation into public officials who allegedly accepted bribes from the company during the 2013 Confederations Cup and the 2014 World Cup.¹⁴ This investigation reflects CGU’s increasing efforts to collaborate with foreign and domestic investigations.

ECUADOR: DOJ SECURES 10TH AND 11TH GUILTY PLEAS IN PETROECUADOR BRIBERY SCHEME

DOJ’s efforts to prosecute individuals involved in a bribery scheme at PetroEcuador, Ecuador’s national oil company, continue to unfold. On October 11, 2019, Chatburn Ripalda pleaded guilty to a money laundering conspiracy for allegedly facilitating bribe payments worth US\$3.2 million to PetroEcuador officials in order to secure contracts for Galileo Energy S.A.¹⁵ On December 18, 2019, he was sentenced to 42 months in prison, a three-year supervised release, and a US\$40,000 fine.¹⁶

On November 14, 2019, José Raúl de la Torre Prado, a former PetroEcuador official, became the 11th individual to plead guilty in the U.S. for his involvement in the scheme. De la Torre admitted to soliciting over US\$3 million in bribes from a company in return for favorable contracts with PetroEcuador.

Following these developments, on December 13, 2019, PetroEcuador asked a Miami federal court to recognize it as a victim and grant it restitution in Chatburn Ripalda’s case. The restitution hearing is set for February 5, 2020.¹⁷ PetroEcuador filed their motion for restitution despite having been denied similar relief in prior requests.¹⁸



PERU DISSOLVES CONGRESS AND PERSISTS IN FIGHTING CORRUPTION

In September 2019, Peruvian President Martin Vizcarra dissolved Congress in an attempt to end a year-long battle with rightwing lawmakers over his anticorruption campaign.¹⁹ Vizcarra then called congressional elections to replace the majority party, led by former presidential candidate Keiko Fujimori, who was in jail at the time but was later released. In late October, Peru's top court accepted a lawsuit to determine whether the President exceeded his powers by dissolving Congress. Despite this, new legislative elections are scheduled for January 26, 2020 to elect new Congress members.²⁰

Meanwhile, anticorruption enforcement efforts in Peru continue to move at a quick pace. In November 2019, a Peruvian judge ordered 14 lawyers to be detained as an investigation was conducted into alleged favoritism in the awarding of public-works contracts with a value of at least US\$250 million to Brazilian construction company Odebrecht.²¹ In late November, a Peruvian court overturned eight of these pre-trial detention orders; however, despite the successful appeal of pre-detention orders, the eight released lawyers remain under investigation.²²

MEXICO'S NEW ENFORCEMENT ENVIRONMENT

The more rigorous enforcement environment in Mexico that many expected under the administration of President Andres Manuel Lopez Obrador appears to be coming into view. Recently, it was made public that Mexico's Chief Anticorruption Prosecutor, Ms. Luz Mijangos Borja, already has 680 cases under investigation.²³ Mijangos Borja was appointed in March 2019. In the eight months in her role, she has quickly and quietly increased investigative activity.

At the same time, the statutory authority of Mexican officials to pursue anticorruption cases has grown. On November 6, 2019, Mexico's legislature voted in favor of allowing the country's Ministry of Finance to add individuals suspected of money laundering and other financial crimes to an official register that allows their assets to be frozen. Under the proposed amendment, those seeking to appeal a Ministry of Finance's decision to blacklist them have to submit a request for relief to the Financial Intelligence Unit, which oversees the register.²⁴ This, in combination with the National Asset Forfeiture Act (August 2019) which granted the Mexican Attorney General the authority to sell assets seized from certain suspects without judicial oversight, broadens the enforcement powers of the government.²⁵

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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."

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AUSTIN	CHICAGO	GENEVA	LOS ANGELES	PARIS	SILICON VALLEY	WASHINGTON, D.C.



¹ Richard L. Cassin, *Jury convicts Hoskins of multiple FCPA and money laundering offenses*, The FCPA Blog (Nov. 8, 2019), <https://fcpublog.com/2019/11/08/jury-convicts-hoskins-of-multiple-fcpa-and-money-laundering-offenses>.

² *Id.*

³ Assistant Attorney General Brian A. Benczkowski Delivers Remarks at the American Conference Institute's 36th International Conference on the Foreign Corrupt Practices Act, DOJ, Off. of Public Affairs (Dec. 4, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-american-conference>.

⁴ *Id.*

⁵ Export Control and Sanctions Enforcement Policy for Business Organizations, DOJ (Dec. 13, 2019), https://www.justice.gov/nsd/ces_vsd_policy_2019/download?utm_medium=email&utm_source=govdelivery.

⁶ Will Barbieri, US Bolsters Incentives for Self-Reporting of Sanctions Violations, Global Investigations Review (Dec. 16, 2019), <https://globalinvestigationsreview.com/article/1212207/us-bolsters-incentives-for-self-reporting-of-sanctions-violations>.

⁷ DOJ, *supra* note 5, at 2.

⁸ Principal Deputy Assistant Attorney General David Burns Delivers Remarks Announcing New Export Controls and Sanctions Enforcement Policy for Business Organizations, DOJ (Dec. 13, 2019), <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-david-burns-delivers-remarks-announcing-new>.

⁹ Q3 2019: Latin America Enforcement Review, October 14, 2019.

¹⁰ FBI Wants New Unit for Brazilian Evidence Requests, Latin Lawyer (Nov. 14, 2019), <https://latinlawyer.com/article/1210894/fbi-wants-new-unit-for-brazilian-evidence-requests>; David Brassanini, Latin Lawyer – Global Investigations Review Live 7th Annual Anti-Corruption and Investigations conference.

¹¹ Michael Griffiths, The Odebrecht Fact Sheet, Latin Lawyer (Mar. 2, 2017), <https://latinlawyer.com/article/1129974/the-odebrecht-fact-sheet>.

¹² AGU e CGU assinam acordo de leniência com OAS, que pagará R\$ 1,92 bilhão, Advocacia-Geral da União (Nov. 14, 2019), http://www.agu.gov.br/page/content/detail/id_conteudo/836430.

¹³ Antiga Engevix, Nova Participações pagará R\$ 516 milhões após acordo de leniência, Advocacia-Geral da União (Nov. 12, 2019), http://www.agu.gov.br/page/content/detail/id_conteudo/834230.

¹⁴ Paulo Roberto Netto, CGU investiga agentes acusados de receber ingressos da Copa devido a 'cargos estratégicos,' Estadão (Nov. 25, 2019), <https://politica.estadao.com.br/blogs/fausto-macedo/cgu-investiga-agentes-acusados-de-receber-ingressos-da-copa-devido-a-cargos-estrategicos/>; Will Neal, Brazil launches probe into officials allegedly bribed with football tickets, Latin Lawyer (Nov. 29, 2019), <https://latinlawyer.com/article/1211482/brazil-launches-probe-into-officials-allegedly-bribed-with-football-tickets>.

¹⁵ Clara Hudson, Anti-Corruption: On Eve of Trial, Miami Businessman Pleads Guilty, Global Investigations Review (Oct. 11, 2019), <https://globalinvestigationsreview.com/article/jac/1209513/on-eve-of-trial-miami-businessman-pleads-guilty>.

¹⁶ Clara Hudson, *Just Anticorruption: Miami Businessman Sentenced in PetroEcuador Bribery Case*, Global Investigations Review (Dec. 18, 2019), <https://globalinvestigationsreview.com/article/jac/1212276/miami-businessman-sentenced-in-petroecuador-bribery-case>.

¹⁷ Clara Hudson, Just Anti-Corruption: PetroEcuador Doubles Down in Restitution Battle, Global Investigations Review (Dec. 16, 2019), <https://globalinvestigationsreview.com/article/jac/1212206/petroecuador-doubles-down-in-restitution->.

¹⁸ Clara Hudson, Just Anti-Corruption: PetroEcuador is Not a Victim, Miami Judge Says, Global Investigations Review (Sept. 23, 2019), <https://globalinvestigationsreview.com/article/jac/1197882/petroecuador-is-not-a-victim-miami-judge-says>.

¹⁹ Franklin Briceno, et al., Peru President Dissolves Congress Amid Anti-Corruption Push, AP News (Sept. 30, 2019), <https://apnews.com/82d3dd0d76054d5ba6744825c448d973>.

²⁰ Marco Aquino, et al., *Peru's Top Court Accepts Lawsuit Against Vizcarra's Closure of Congress*, Reuters (Oct. 29, 2019), <https://www.reuters.com/article/us-peru-politics/perus-top-court-accepts-lawsuit-against-vizcarras-closure-of-congress-idUSKBN1X82IU>.

²¹ Peruvian Judgment (Nov. 4, 2019), https://globalarbitrationreview.com/digital_assets/57524d75-4cc9-4862-b532-5b50d6c6cad4/Peruvian-arbitrators-criminal-judgment.pdf.

²² Peruvian Appeal Decision (Nov. 25, 2019), https://globalarbitrationreview.com/digital_assets/91c1dc83-4418-4002-abfc-36d330a9a5e6/First-Criminal-Court-of-Appeals-judgment.pdf.

²³ Luis Dantón Martínez Corres, New Corruption Prosecutor Opens 680 Investigations, The FCPA Blog (Dec. 18, 2019), <https://fcpublog.com/2019/12/18/new-corruption-prosecutor-opens-680-investigations/>.

²⁴ Will Neal, Mexican Parliament Votes to Expand Powers of Finance Ministry, Global Investigations Review (Nov. 7, 2019), <https://globalinvestigationsreview.com/article/1210714/mexican-parliament-votes-to-expand-powers-of-finance-ministry>.

²⁵ Santamarina and Steta SC, New National Asset Forfeiture Law (Ley Nacional de Extinción de Dominio), Lexology (Aug. 13, 2019), <https://www.lexology.com/library/detail.aspx?g=7a4d11a4-3d3e-41a2-adfe-fd2e1fc57dd7>.