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For more information,  
contact:

Brandt Leibe  
+1 713 751 3235  
[bleibe@kslaw.com](mailto:bleibe@kslaw.com)

Grant Nichols  
+1 512 457 2006  
[gnichols@kslaw.com](mailto:gnichols@kslaw.com)

Joel Crespo  
+1 202 626 8975  
[joel.crespo@kslaw.com](mailto:joel.crespo@kslaw.com)

Rafaela Calcena  
+1 212 556 2353  
[rcalcena@kslaw.com](mailto:rcalcena@kslaw.com)

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**King & Spalding**

Houston  
1100 Louisiana Street  
Suite 4000  
Houston, Texas 77002-5213  
Tel: +1 713 751 3200

Washington, D.C.  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500

## Q1 2020: Latin American Enforcement Review

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Enforcement authorities throughout the United States and Latin America are grappling with the impact of the COVID-19 pandemic, which is dramatically changing the economic landscape and is sure to change the enforcement landscape as well. Peruvian authorities have already temporarily suspended their investigative work into Odebrecht due to the pandemic, and Brazil's prosecutor general requested the court to divert settlement payments from the Petrobras corruption settlement to cope with the impact of the pandemic.<sup>1</sup> More changes are sure to come. For now, we hope this update summarizing some recent developments in Latin America enforcement finds you, your family, and your co-workers safe and healthy.

### THE IMPACT OF COVID-19 IN LATAM: NAVIGATING AN UNCERTAIN CLIMATE

On February 26, 2020, Brazil became the first country in Latin America with a confirmed COVID-19 case. Since then, countries across Latin America have adopted mandatory lockdowns.<sup>2</sup> Brazil has also undertaken shutdown measures, but unlike other nations, its President continues to downplay the risks of COVID-19.<sup>3</sup> In Brazil, State Governors, powerful businessmen, healthcare professionals, and a significant part of the population opposed the President's posture based on the inability of the healthcare system to withstand the pandemic and the availability of medical supplies.

Under this new environment, companies have to move fast and under tremendous pressure, adapting to the new—and hopefully temporary—reality. Over the last few weeks, companies have implemented work-from-home policies (to the extent feasible), renegotiated supply and commercial contracts, and reviewed their decisions on strategic investments and upcoming transactions. Circumstances like these pose a serious challenge to company compliance programs. The risk and opportunity for fraud, violations of internal procedures, and corrupt behavior increase as companies focus on dealing with the impact of this crisis. Even under these unprecedented circumstances, companies should not lose sight of



the importance of and adherence to their compliance systems—especially if their operations involve interactions with public officials.

In terms of enforcement, it is likely that fewer investigations will be initiated in the coming months given the emergency measures adopted in the vast majority of countries. Activity in ongoing investigations may also wane. For example, the Peruvian Operation Car Wash task force has suspended its investigation concerning Odebrecht bribery scandal in Peru following the government's declaration of a state of emergency due to the spread of the coronavirus.<sup>4</sup> There are exceptions, however, and there will be new ways of operating. For example, the Brazilian Antitrust Authority, CADE, held its first trial session online on April 15, 2020. Despite this temporary retraction in enforcement activity, we expect authorities from geographies throughout the Americas to make up for lost time once business activity and other walks of life return to some form of normal. Companies that plan for such a resurgence and maintain their commitment to their compliance programs will reap the benefits in the months and years that follow the pandemic.

### **BRAZIL'S NEW REGULATIONS CREATE INCENTIVE AND PROTECTION FOR WHISTLEBLOWERS**

Brazil continued its efforts to combat corruption by approving two rules aimed at further protecting whistleblowers. These new tools that are designed to detect misconduct may result in an increased number of corruption complaints involving public agents.

The first regulation went into effect on January 23, 2020. Law No. 13,964—Package Anti-Crime—creates reporting channels available for anyone who wants to report (1) crimes against the public administration and (2) administrative misconduct, actions, and omissions detrimental to the public interest which include corruption related offenses. The statute ensures protection for whistleblowers against retaliation and proposes a monetary award for whistleblowers of up to five percent of the amount recovered by the government.<sup>5</sup>

The second regulation went into effect on March 3, 2020. The new Decree No. 10,153 (“Decree”) became the first rule in Brazil establishing procedures to protect the identity of whistleblowers reporting illicit activity or irregularities performed by federal government agencies and entities. The decree applies to all public administration or government-related entities, as well as all state-owned companies.<sup>6</sup>

The Decree uses a pseudonymization mechanism, a process whereby the personal information of whistleblowers is subjected to an additional layer of protection preventing the identification or association of that information with an individual, as defined by Brazil's General Data Privacy Law. In so doing, it ensures the confidentiality of the name, address, and any other personal data that would enable the identification of the whistleblower. These recent developments are aligned with the recommendations issued by the OECD Working Group on Bribery in 2017 for the adoption of measures to protect whistleblowers in order to encourage the individuals to report suspected cases of bribery without fear of retaliation.<sup>7</sup>

### **FORMER HEAD OF PEMEX ACCUSED OF INVOLVEMENT IN ODEBRECHT SCANDAL: AMLO'S OPPORTUNITY TO FULFILL HIS MANDATE**

Emilio Lozoya, the former CEO of Pemex, was arrested in Spain in March 2020, becoming the highest-profile former Mexican official to be detained on corruption charges under President Andrés Manuel López Obrador's government.<sup>8</sup> The Mexican Foreign Affairs Ministry has recently requested Spain to extradite Lozoya to face corruption charges in Mexico.<sup>9</sup>

Mr. Lozoya was Pemex's CEO from 2012 to 2016 and is accused of taking bribes in exchange for contracts from the Brazilian construction company, Odebrecht S.A. The accusations against Mr. Lozoya involve Pemex's purchase of a fertilizer plant from Altos Hornos de México (“AHMSA”) for an allegedly inflated value. Mexican authorities allege



that part of the inflated purchase price AHMSA transferred to one of Odebrecht's shell companies connected to Mr. Lozoya was a bribe.

As part of its plea deals with U.S., Brazilian, and Swiss authorities in 2016, Odebrecht admitted bribing government officials across Latin America. The company revealed to authorities a major corruption scheme involving high-level officials in several countries including Peru, Ecuador, and Colombia. The Lozoya scandal is the first Odebrecht-related investigation conducted by Mexican authorities.

Before joining Pemex, Mr. Lozoya was a key official on former President Enrique Peña Nieto's 2012 presidential campaign.<sup>10</sup> One of President López Obrador's promises was to end pervasive corruption in the Mexican government, and Mr. Lozoya's arrest is a significant step to advance President López Obrador's policy against impunity and corruption.

Mr. Lozoya's arrest was a collaborative effort between law enforcement authorities in Mexico, Spain, and other countries, with support from Interpol, according to Mexico's Attorney General.<sup>11</sup> Given Mr. Lozoya's prominent role in the prior administration, his arrest may open the door to other facts and lead to new investigations related to prior Mexican government officials.

#### SIX CITGO EXECUTIVES WERE JAILED IN VENEZUELA, WHILE TENSIONS BETWEEN THE U.S. AND VENEZUELA INCREASE

Citgo Petroleum Corp., an oil refiner previously controlled by the government of President Nicolás Maduro, is Venezuela's most valuable overseas asset. Citgo has been the gateway for Venezuelan oil into the U.S. market for years, and a crucial source of revenue for Maduro's government.<sup>12</sup> However, control of Citgo changed hands last year after a U.S. court ruled that because the Trump administration recognized Juan Guaidó as the Venezuelan legitimate leader, Guaidó's appointments to Citgo's board were valid.<sup>13</sup> Since then, Citgo has replaced its crude from Venezuela with oil from other Latin American countries and Africa, as U.S. sanctions have made oil shipments between Citgo and Venezuela impossible since January 2020.<sup>14</sup>

As a consequence of the Trump administration's recognition of Guaidó as the legitimate leader of Venezuela, the relationship between the U.S. and the Maduro government in Venezuela has worsened. In February, following a meeting between President Trump and Guaidó, six Citgo executives—five U.S. citizens and one U.S. permanent resident—who were under house arrest for almost two months, after being imprisoned for almost two years in Venezuela, were suddenly taken back to jail despite no court order revoking their house arrest or ordering the transfer. The six were originally arrested in November 2017 and charged with money laundering, embezzlement, racketeering, and participating in organized crime. Their trial has been delayed, and the Citgo executives are still detained in Venezuela despite the U.S. State Department's call for their release.<sup>15</sup>

#### CROSS-BORDER BRIBERY INVESTIGATIONS: THE WOOD GROUP AND ALEXION DISCUSS SETTLEMENT AGREEMENTS

On March 10, 2020, the John Wood Group disclosed that it expects to enter a settlement to resolve investigations by the U.S. Department of Justice (DOJ), the U.S. Securities & Exchange Commission (SEC), Brazilian authorities, and Scottish authorities for a total of approximately \$46 million.<sup>16</sup> This resolution requires coordination with five authorities in three separate jurisdictions, which may complicate finalization.

According to the Wood Group, in 2017, the company received requests for voluntary production of information from the SEC and the DOJ in connection with ongoing investigations into Amec Foster Wheeler's<sup>17</sup> relationship to Unaoil and its historical use of agents. Amec Foster Wheeler disclosed these matters to the U.K. Serious Fraud Office



(SFO), which opened an investigation as well. Relevant authorities in Brazil were also notified about the investigation since improper payments were made to agents in that country.

Like the Wood Group, Alexion, an American pharmaceutical company, has disclosed preliminary discussions with the SEC to resolve a cross-border bribery investigation involving Brazil, Russia, Turkey, and Japan. U.S. authorities started investigating Alexion in 2015 when the SEC requested information about Alexion’s grant-making activities, as well as its compliance with the FCPA in those jurisdictions, which the U.S. DOJ has also questioned.<sup>18</sup> A bit later, in 2017, Brazilian authorities raided Alexion’s office in São Paulo in connection with the U.S. investigations.<sup>19</sup>

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<sup>1</sup> Will Barbieri, *Brazil’s prosecutor general asks to divert Petrobras bribery settlement funds to fight coronavirus*, Global Investigations Review (Mar. 20, 2020), <https://globalinvestigationsreview.com/article/1216445/brazil%E2%80%99s-prosecutor-general-asks-to-divert-petrobras-bribery-settlement-funds-to-fight-coronavirus>.

<sup>2</sup> Luisa Horwitz, *Where Is the Coronavirus in Latin America?*, ASI/COA, (Mar. 27, 2020), <https://www.as-coa.org/articles/where-coronavirus-latin-america>.

<sup>3</sup> Ernesto Londoño, et al., *As Latin America Shuts Down to Fight Virus, Brazil and Mexico Are Holdouts*, N.Y Times (Mar. 25, 2020), <https://www.nytimes.com/2020/03/25/world/americas/coronavirus-brasil-mexico.html>.

<sup>4</sup> James Thomas, *Peru suspends Operation Car Wash investigations amid coronavirus pandemic*, Global Investigations Review (March 23, 2020), <https://globalinvestigationsreview.com/article/1222176/peru-suspends-operation-car-wash-investigations-amid-coronavirus-pandemic>.

<sup>5</sup> Lucas Maragno, *Brazil moves closer to (small) whistleblower rewards*, The FCPA Blog (Feb. 13, 2020), <https://fcpublog.com/2020/02/13/brazil-moves-closer-to-small-whistleblower-rewards>. Brazil, Law No. 13,964, (December 24, 2019), [http://www.planalto.gov.br/ccivil\\_03/ Ato2019-2022/2019/Lei/L13964.htm#art15](http://www.planalto.gov.br/ccivil_03/ Ato2019-2022/2019/Lei/L13964.htm#art15).

<sup>6</sup> Brazil, Decree No. 10,153 (December 3, 2019), [http://www.planalto.gov.br/ccivil\\_03/ ato2019-2022/2019/decreto/D10153.htm](http://www.planalto.gov.br/ccivil_03/ ato2019-2022/2019/decreto/D10153.htm).

<sup>7</sup> OECD, *Brazil Follow-up To The Phase 3 Report & Recommendations at 51*, (Feb. 2017), <https://www.oecd.org/corruption/anti-bribery/Brazil-Phase-3-Written-Follow-Up-Report-ENG.pdf>.

<sup>8</sup> José de Córdoba and Juan Montes, *Former Pemex Chief Arrested in Spain*, Wall St. J. (Updated Feb. 12, 2020), <https://www.wsj.com/articles/former-pemex-chief-arrested-in-spain-11581529973>.



<sup>9</sup> Mexico officially asks Spain to extradite Emilio Lozoya, Yucatan Times (Mar. 24, 2020), <https://www.theyucatanimes.com/2020/03/mexico-officially-asks-spain-to-extradite-emilio-lozoya>.

<sup>10</sup> José de Córdoba and Juan Montes, *Former Pemex Chief Arrested in Spain*, Wall St. J. (Updated Feb. 12, 2020).

<sup>11</sup> Kirk Semple, Raphael Minder, *Arrest of Former Oil Chief is a Win for Mexico's Anti-Corruption Drive*, N.Y Times (Feb. 12, 2020), <https://www.nytimes.com/2020/02/12/world/americas/mexico-lozoya-pemex-odebrecht.html>.

<sup>12</sup> Clifford Krauss, *'It's the Only Way to Get Paid': A Struggle for Citgo, Venezuela's U.S. Oil Company*, N.Y. Times, (Oct. 19, 2019), <https://www.nytimes.com/2019/10/17/business/energy-environment/citgo-venezuela-creditors.html>.

<sup>13</sup> *U.S. court rules against Maduro bid to oust opposition-backed Citgo board*, Reuters, (Aug. 3, 2019), <https://www.reuters.com/article/us-venezuela-citgo-court/u-s-court-rules-against-maduro-bid-to-oust-opposition-backed-citgo-board-idUSKCN1UT0F5>.

<sup>14</sup> Anthony Faiola, *Trial of Venezuela's Citgo Six delayed; fearful family members want the Trump administration to do more*, Washington Post, (Feb. 19, 2020), [https://www.washingtonpost.com/world/the\\_americas/trial-of-venezuelas-citgo-six-delayed-fearful-family-members-want-the-trump-administration-to-do-more/2020/02/19/8ac2f990-528f-11ea-80ce-37a8d4266c09\\_story.html](https://www.washingtonpost.com/world/the_americas/trial-of-venezuelas-citgo-six-delayed-fearful-family-members-want-the-trump-administration-to-do-more/2020/02/19/8ac2f990-528f-11ea-80ce-37a8d4266c09_story.html). Carmen Sesin, *Amid growing tensions with U.S., Citgo executives are imprisoned again in Venezuela*, NBC, (Feb. 07, 2020), <https://www.nbcnews.com/news/latino/amid-growing-tensions-u-s-citgo-executives-are-imprisoned-again-n1132571>.

<sup>15</sup> *Id.*

<sup>16</sup> John Wood Group PLC, *Full year results for the year ended 31 Dec 2019*, (Mar. 10, 2020), <https://www.woodplc.com/news/2020/full-year-results-for-the-year-ended-31-december-2019>.

<sup>17</sup> The Wood Group completed the acquisition of Amec Foster Wheeler in Oct. 2017.

<sup>18</sup> Ines Kagubare, *Alexion in talks with SEC over bribery probe*, Global Investigations Review, (Feb. 04, 2020), <https://globalinvestigationsreview.com/article/jac/1214040/alexion-in-talks-with-sec-over-bribery-probe>.

<sup>19</sup> Mario Sergio Lima and Doni Bloomfield, *Alexion Raided by Brazilian Police in Sales Practices Probe*, Bloomberg, (May 8, 2017), <https://www.bloomberg.com/news/articles/2017-05-08/alexion-is-raided-by-brazilian-police-in-sales-practices-probe>.