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## Q1 2021: Latin American Enforcement Review

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Enforcement authorities throughout the Americas continued investigations of fraud, corruption, and other misconduct across the region. Below are some of the highlights of the last quarter.

### A LAST CHAPTER IN LAVA JATO?

After Brazilian President Jair Bolsonaro's declaration in October 2020 that corruption in Brazil had been eradicated and that Lava Jato was over,<sup>1</sup> Brazil's Federal Prosecution Service ("MPF") announced in February 2021 that the Lava Jato task force in Curitiba had come to an end.<sup>2</sup> Lava Jato was certainly a milestone in Brazil's fight against corruption. According to the MPF, Lava Jato included 79 phases, 1,450 search and seizure orders, 130 complaints against 533 defendants, and 278 convictions.<sup>3</sup> As it has progressed, Brazilian enforcement authorities have gained tremendous expertise in conducting white-collar investigations over the last few years, and any "end" to Lava Jato should not be seen as an end of white-collar investigations in Brazil.

This is despite a series of recent decisions from the Supreme Court of Brazil in favor of the former president Luiz Inácio Lula da Silva ("Lula"). The recent decisions are the latest significant development related to Lava Jato. The Federal Court of Curitiba convicted Lula, who led Brazil from 2003 to 2010, in two separate cases in 2017 and 2019, for money laundering and receiving bribes from companies in return for public contracts.<sup>4</sup>

Most recently, Lula's luck changed with a decision issued on March 8, 2021 by a Supreme Court Justice, Edson Fachin, ruling that the court in Curitiba that decided Lula's cases did not have the requisite jurisdiction and annulled all decisions against Lula.<sup>5</sup> Justice Fachin's decision was upheld by the Supreme Court on April 14, 2021. As a result, Lula's cases will be remanded to a different court that will reassess the evidence and issue new decisions.

Separately, on March 23, the Supreme Court also decided that the evidence used to convict Lula in the triplex case<sup>6</sup> was inadmissible due to



Judge Sergio Moro's bias, and prohibited the use of that evidence in any eventual trial. The evidence is related to Lula's alleged ownership of a triplex in Guarujá, São Paulo. The majority of the Supreme Court decided that the communications between former Judge Moro and the MPF are evidence of Moro's bias. One of the Justices, Carmen Lucia, who cast the tie-breaking vote, emphasized that everyone has a right to a fair trial, noting that wiretapping phone conversations of Lula's attorneys, before the adoption of other possible measures, violated Lula's defense rights.<sup>7</sup> The effects of this decision are restricted to the triplex case, but Lula's defense counsel has recently filed an appeal to extend the effects to the other processes against Lula.

The annulment of Lula's corruption convictions will impact the political scenario in Brazil. With the annulment, Lula's political rights have been restored, clearing the way for a potential presidential run next year. In the last election, Lula had to drop out of the presidential race because the Brazilian Supreme court determined that he could not be a candidate given his bribery conviction.

It is still unclear whether these decisions will have an impact on other Lava Jato cases in Brazil. However, the bias-related decision may raise questions as to Judge Moro's credibility and impartiality.

### **BRAZIL'S FEDERAL PROSECUTION SERVICE HAS CHARGED EIKE BATISTA AND OTHERS WITH A MARKET MANIPULATION SCHEME**

On March 9, 2021, the businessman Eike Batista, formerly the richest person in Brazil, was charged with manipulating capital markets. According to the MPF, Batista's conduct involved 304 fraudulent transactions representing a total amount of \$143.2 million. Specifically, these transactions allegedly involved the following: (1) Ventana Gold Corp. and Galway Resources Ltd., formerly listed on the Toronto stock exchange, (2) OGX's bond offerings in the Irish stock exchange, and (3) MMX Mineração e Metálicos' and MPX Energia's transactions in the Sao Paulo's stock exchange.<sup>8</sup>

Based on the complaint, Batista used a Panamanian company called The Adviser Investments (TAI) to buy and sell shares in the national and international financial markets in order to benefit his positions. According to the MPF, TAI operated like an illegal bank, and because the company was not subject to strict oversight it could avoid several compliance obligations. For example, TAI received funds from its clients and did not ask due diligence questions about the origin of the fund. The MPF also noted that TAI negotiated a series of equity and bond transactions on behalf of Batista and others, but it did not disclose that these transactions were made on their behalf.

Although market manipulation cases in Brazil are not common, this is not the first time that Batista has been accused of market manipulation. In February 2021, Batista was convicted for market manipulation and insider trading involving trades with OGX stocks in 2012.<sup>9</sup>

The MPF announced in its press release that this investigation derived from the Lava Jato phase called "Segredo de Midas," performed in August 2019 by the Rio de Janeiro task force.<sup>10</sup>

### **MEXICO TO INVESTIGATE VITOL'S BRIBE SCHEME INVOLVING PEMEX**

As we reported in our Q4 2020 [Enforcement Review](#), on December 3, 2020, Vitol Inc., a U.S.-based affiliate of the Swiss energy trading group, entered into a deferred prosecution agreement (DPA) with the United States Department of Justice (DOJ) to resolve civil and criminal charges that the company conspired to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) by bribing officials in Brazil, Ecuador, and Mexico.<sup>11</sup>

In a coordinated resolution with Brazilian enforcement authorities, Vitol agreed to pay \$135 million to resolve the DOJ investigation as well as a parallel investigation in Brazil by the MPF. Vitol also admitted to bribing officials in Ecuador and Mexico.



With respect to the Mexican misconduct, pursuant to the statement of facts of the DPA, Vitol employees and agents had used an intermediary to make bribe payments to Mexican officials to receive inside information and obtain a contract with a Pemex subsidiary.<sup>12</sup>

According to a statement made by Mexico's President Andrés Manuel López Obrador at a regular news conference, Vitol has recently offered to pay Pemex \$30 million in damages related to the bribe schemes.<sup>13</sup> López Obrador was not satisfied with the offer and said that before accepting any settlement, Mexico must determine whether Pemex took the bribes and for which contracts. Therefore, López Obrador announced on March 3, 2021 that Mexico initiated its own investigation into the Vitol scheme involving Pemex.<sup>14</sup> Furthermore, Pemex has also announced that it is reviewing all contracts with Vitol and is investigating potential irregularities.<sup>15</sup>

### FORMER CITGO OFFICER PLEADS GUILTY IN THE U.S. IN CONNECTION WITH INTERNATIONAL BRIBERY AND MONEY LAUNDERING SCHEME

On March 22, 2021, Citgo's former procurement officer, Jose Luis De Jongh Atencio, admitted to accepting and laundering millions of dollars in bribes in return for his assistance in securing business contracts with Citgo.<sup>16</sup> He pleaded guilty in the U.S. District Court for the Southern District of Texas in Houston to one count of conspiracy to commit money laundering. Citgo is a subsidiary of Petróleos de Venezuela S.A. (PDVSA), Venezuela's state-owned oil company.

According to court documents, from 2013 and 2019, Mr. De Jongh accepted over \$7 million in bribe payments from businessmen in exchange for assisting them and related companies in procuring contracts with Citgo. De Jongh admitted to directing bribe payments from businessmen into bank accounts in the names of shell companies he controlled in Panama and Switzerland. De Jongh laundered the bribe proceeds through U.S. and international bank accounts and used the funds to purchase real property in the U.S.<sup>17</sup>

U.S. enforcement authorities received assistance on the case from the Swiss Federal Office of Justice and the Office of the Attorney General of Panama. To date, the DOJ has announced charges against 28 individuals, 22 of whom have pleaded guilty, as part of its ongoing investigation into misconduct involving PDVSA.<sup>18</sup>



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<sup>1</sup> Bloomberg, *Bolsonaro Says Brazil Is Corruption-Free, Ends Carwash Probe*, (October 7, 2020), <https://www.bloomberg.com/news/articles/2020-10-07/bolsonaro-declares-brazil-corruption-free-and-ends-carwash-probe>

<sup>2</sup> MPF, *Lava Jato passa a integrar o Grupo de Ação Especial de Combate ao Crime Organizado no Paraná*, (February 3, 2021), <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/lava-jato-passa-a-integrar-o-gaeco-no-parana/view>

<sup>3</sup> *Id.*

<sup>4</sup> Folha, *Lula é condenado por Moro em primeiro processo na Lava Jato*, (July 12, 2017), <https://www1.folha.uol.com.br/poder/2017/07/1900580-lula-e-condenado-a-9-anos-por-corrupcao-no-triplex.shtml>; Folha, *Lula é condenado a 12 anos e 11 meses de prisão no caso do sítio de Atibaia*, (February 6, 2019), <https://www1.folha.uol.com.br/poder/2019/02/lula-e-condenado-novamente-na-lava-jato-no-caso-do-sitio-de-atibaia.shtml>

<sup>5</sup> STF, *STF confirma anulação de condenações do ex-presidente Lula na Lava Jato*, (April 15, 2021), <http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=464261&ori=1>

<sup>6</sup> The "triplex case" concerns allegations that Lula was promised an apartment in Guarujá in return for helping the construction company OAS secure contracts with Petrobras. In this case, Lula was convicted to nine years and six months in prison.

<sup>7</sup> STF, *2ª Turma reconhece parcialidade de ex-juiz Sérgio Moro na condenação de Lula no caso Triplex*, (March 23, 2021), <http://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=462854&ori=1>

<sup>8</sup> MPF, *MPF denuncia Eike Batista e outros seis por manipulação de mercado de capitais*, (March 9, 2021), <http://www.mpf.mp.br/rj/sala-de-imprensa/noticias-rj/mpf-denuncia-eike-batista-e-outros-seis-por-manipulacao-de-mercado-de-capitais>

<sup>9</sup> Estadão, *Juiza condena Eike Batista a 11 anos e oito meses de prisão por crimes contra o mercado*, (February 12, 2021), <https://politica.estadao.com.br/blogs/fausto-macedo/juiza-condena-eike-batista-a-11-anos-e-oito-meses-de-prisao-por-crimes-contra-o-mercado/>

<sup>10</sup> MPF, *MPF denuncia Eike Batista e outros seis por manipulação de mercado de capitais*, (March 9, 2021), <http://www.mpf.mp.br/rj/sala-de-imprensa/noticias-rj/mpf-denuncia-eike-batista-e-outros-seis-por-manipulacao-de-mercado-de-capitais>

<sup>11</sup> U.S. Dep't of Justice, *Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Case*, (December 3, 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>

<sup>12</sup> *U.S. v. Vitol Inc.*, Deferred Prosecution Agreement, Cr. No. 20-539 (ENV), (December 3, 2020) at 44, <https://www.justice.gov/opa/press-release/file/1342896/download>

<sup>13</sup> Reuters, *Mexican president says Vitol offered Pemex \$30 mln in damages after scandal*, (March 3, 2021), <https://www.reuters.com/world/americas/mexico-says-vitol-offered-pay-pemex-millions-damages-2021-03-03/#:~:text=Vitol%2C%20the%20world's%20largest%20independent,Lopez%20Obrador%20said%20on%20Wednesday>; Reuters, *Exclusive: Mexico seeks better trade terms from Vitol following bribery scandal*, (March 22, 2021), <https://www.reuters.com/article/us-mexico-vitol-exclusive/exclusive-mexico-seeks-better-trade-terms-from-vitol-following-bribery-scandal-idUSKBN2BE0TG; see also https://www.businessinsider.com/mexico-says-vitol-offered-to-pay-pemex-millions-in-damages-2021-3>

<sup>14</sup> *Id.*



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

<sup>16</sup> U.S. Dep't of Justice, *Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme*, (March 23, 2021), <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>

<sup>17</sup> U.S. Dep't of Justice, *Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme*, (March 23, 2021), <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>

<sup>18</sup> *Id.*