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Foreign Corrupt Practices Act Alert

Latin America Anti-Bribery Year-in-Review: 2019 Developments and Predictions for 2020

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I. INTRODUCTION

Foreign Corrupt Practices Act (FCPA) enforcement activity reached new heights in 2019. Corporate penalties paid to US enforcement agencies topped last year's record levels, and individuals were charged at a pace matching last year's near-record level.² As discussed in detail below, Latin American citizens from Ecuador to Venezuela have recently found themselves facing criminal anti-corruption charges in federal courts in the US.

These trends are critically important both to Latin American companies and to US companies doing business in Latin America. As recent enforcement trends show, foreign companies are a perennial target of US enforcement agencies. Nine of the top 10 all-time largest FCPA enforcement actions have been brought against companies based outside the US, including several Brazilian companies.

Similarly, US companies with operations in Latin America have good reason to ensure that they have strong anti-corruption controls in place because, as discussed below, US enforcement agencies are investigating corruption by US companies operating across the region, from Mexico to Peru.

This alert summarizes key Latin America 2019 anti-bribery enforcement developments and concludes with predictions for 2020. For a comprehensive global review of enforcement and policy developments, please refer to WilmerHale's [FCPA Alert: Global Anti-Bribery Year-in-Review](#) for 2019.

II. KEY INVESTIGATION-RELATED DEVELOPMENTS IN LATIN AMERICA

A. Notable Features of 2019 Corporate Resolutions in Latin American Cases

1. Continued Reliance on FCPA Accounting Provisions

In 2019, as in recent years, the SEC and the DOJ brought several FCPA actions against companies based solely on alleged violations of the internal accounting controls and books and records provisions of the FCPA, without

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² WilmerHale, *Foreign Corrupt Practices Act Alert: Global Anti-Bribery Year-in-Review: 2019 Developments and Predictions for 2020* (Jan. 30, 2020), at 4-5, <https://www.wilmerhale.com/en/insights/client-alerts/20200130-global-anti-bribery-year-in-review-2019-developments-and-predictions-for-2020>.

bringing bribery charges. For example, in a June resolution with Walmart, the SEC and the DOJ resolved the matter based on only internal controls and bookkeeping violations where, according to the government, Walmart's internal controls for anti-corruption were deficient from 2000 to 2011. The government alleged that during that time, Walmart subsidiaries in several countries including Brazil and Mexico hired third-party intermediaries to obtain various permits or licenses without reasonable assurances that these transactions complied with their stated purposes and the prohibition on improper payments.³ That the eventual resolution was not based on an anti-bribery violation suggests that the government was unable to establish all such elements or that there was not sufficient jurisdiction to charge under those provisions.

Similarly, the SEC's May settlement with Telefônica Brasil S.A., a Brazilian telecommunications company, involved internal controls and bookkeeping provisions with limited or no evidence of corrupt conduct and only a tenuous connection to the United States.⁴ Telefônica provided dozens of government officials with tickets and related hospitality for soccer matches during the 2013 Confederations Cup and the 2014 World Cup worth more than \$730,000. Those officials were either directly involved with, or were in a position to influence, legislative actions, regulatory approvals, and business dealings involving Telefônica.⁵ The SEC charged that Telefônica improperly recorded its spending on these gifts and hospitality in the company's books as "Publicity Institutional Events" and "Advertising & Publicity" as opposed to gifts to government officials, and that Telefônica lacked internal accounting controls sufficient to enforce its general code of ethics.⁶ The SEC did not allege any direct connection between the gifts and any specific improper advantages received by Telefônica, but rather only alleged that while Telefônica did have high-level policies prohibiting the offer of gifts and hospitality for improper purposes, it lacked sufficiently robust controls to prevent the gifts at issue.⁷ Notably, the SEC imposed penalties of \$4.125 million (with no disgorgement), more than five times the value of the gifts given to the government officials.⁸

2. Self-Disclosure and Cooperation

The DOJ and SEC remained keenly focused on voluntary disclosure and cooperation in 2019. Indeed, the DOJ's Corporate Enforcement Policy rewards companies that voluntarily self-disclose potential misconduct, fully cooperate, and timely and appropriately remediate wrongdoing with a "presumption" that the company will receive a declination in such circumstances.⁹

The case of Quad/Graphics—an American printing company with operations in several Latin American countries—is especially illustrative of the potential benefits of self-disclosure and full cooperation for both companies and individuals. Quad/Graphics consented to a cease-and-desist order and agreed to pay the SEC \$10 million to resolve charges stemming from the payment of bribes to secure printing contracts in Peru and China.¹⁰

³ Non-Prosecution Agreement between US Department of Justice and Walmart Inc., Attachment A ¶ 20 (June 20, 2019), <https://www.justice.gov/opa/press-release/file/1175791/download>; Order Instituting Cease-and-Desist Proceedings, *In the Matter of Walmart Inc.*, Rel. No. 86159, File No. 3-19207, ¶ 1 (June 20, 2019).

⁴ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Telefônica Brasil S.A.*, Rel. No. 85819, File No. 3-19162, ¶ 2 (May 9, 2019).

⁵ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Telefônica Brasil S.A.*, Rel. No. 85819, File No. 3-19162, ¶¶ 2, 8, 12 (May 9, 2019).

⁶ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Telefônica Brasil S.A.*, Rel. No. 85819, File No. 3-19162, ¶ 16 (May 9, 2019).

⁷ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Telefônica Brasil S.A.*, Rel. No. 85819, File No. 3-19162, ¶¶ 13-15 (May 9, 2019).

⁸ Order Instituting Cease-and-Desist Proceedings, *In the Matter of Telefônica Brasil S.A.*, Rel. No. 85819, File No. 3-19162, ¶¶ 7, 11, 20(B) (May 9, 2019). This large fine is reminiscent of the SEC's 2015 order against BHP Billiton. There, BHP Billiton agreed to pay the SEC \$25 million to settle books and records and internal controls violations, where the SEC alleged that the company offered gifts and entertainment to approximately 176 government officials and their guests during the 2008 Summer Olympic Games in Beijing. The SEC noted that 60 government officials accepted the invitation—including 24 who came with spouses or guests—some of whom flew business class to the events. The SEC did not suggest the approximate value of the gifts and entertainment provided to these officials, but, like in the Telefônica Brasil settlement, it was likely much less than the penalty that BHP incurred. See Order Instituting Cease-and-Desist Proceedings, *In the Matter of BHP Billiton Ltd. and BHP Billiton Plc*, Rel. No. 74998, File No. 3-16546, ¶¶ 1-3, 15, IV(B) (May 20, 2015).

⁹ US Department of Justice, FCPA Corporate Enforcement Policy, JUSTICE MANUAL § 9-47.120 (2019).

¹⁰ US Securities and Exchange Commission Press Release No. 2019-193: SEC Charges Marketing and Printing Services Provider with FCPA Violations (Sept. 26, 2019), <https://www.sec.gov/news/press-release/2019-193>.

Quad/Graphics employees allegedly made \$1 million in improper payments over five years to government officials in Peru and China to secure printing contracts, minimize penalty payments, and improperly influence the judicial outcome of a dispute with the Peruvian tax authority.¹¹ The DOJ declined to prosecute in light of the company's (1) prompt, voluntary self-disclosure; (2) thorough and comprehensive investigation; (3) full and proactive cooperation; (4) lack of prior criminal history; and (5) full remediation, including taking steps to enhance its compliance program, terminating the employment of individuals involved in misconduct, and discontinuing relationships with contractors and third parties involved in misconduct.¹²

3. Continued Use of Monitors

The retention of independent compliance monitors continues to be an important condition imposed in many DOJ and SEC resolutions, and several current monitorships include operations in Latin America. For example, Fresenius Medical Care AG & Co. KGaA ("Fresenius") reached resolutions with the DOJ and SEC in 2019 that included a two-year monitorship. The DOJ alleged that Fresenius paid bribes to "publicly employed health and/or government officials" to gain business benefits and failed to implement reasonable internal accounting controls" in a number of countries, including Mexico and Spain.¹³

Similarly, the DOJ also required Walmart to engage a monitor for a term of two years. Consistent with the Department's statements acknowledging the company's substantial remediation and the findings of misconduct limited to particular jurisdictions, the scope of the monitor's work is limited to a review of the company's operations in four markets, including two in Latin America, as well as its home office in Arkansas.¹⁴

It is worth noting that the monitors selected in 2019 were more diverse than in years past. For example, WilmerHale's Erin Sloane was appointed by US authorities to monitor Fresenius;¹⁵ she is only the fourth woman ever appointed as an FCPA monitor.¹⁶ This trend follows a 2018 ruling by a Washington DC federal district court ordering the DOJ to release the names of unsuccessful candidates for FCPA monitorships in response to a FOIA request.¹⁷ We predicted that the ruling "may encourage both companies and enforcement authorities to broaden their pool of potential monitors from both a diversity and experiential perspective."¹⁸ A *Global Investigations Review* report found that US-based monitor candidates did not include any women from 2009 to 2015, and the majority of candidates were

¹¹ Non-Prosecution Agreement between US Department of Justice and Quad/Graphics Inc., at 1-2 (Sep. 19, 2019), <https://www.justice.gov/criminal-fraud/file/1205341/download>.

¹² Non-Prosecution Agreement between US Department of Justice and Quad/Graphics Inc., at 1-2 (Sep. 19, 2019), <https://www.justice.gov/criminal-fraud/file/1205341/download>.

¹³ Non-Prosecution Agreement between US Department of Justice and Fresenius Medical Care AG & Co. KGaA, at A-2 (Feb. 25, 2019), <https://www.justice.gov/opa/pr/fresenius-medical-care-agrees-pay-231-million-criminal-penalties-and-disgorgement-resolve>.

¹⁴ Non-Prosecution Agreement between US Department of Justice and Walmart Inc., at A-1 (June 20, 2019), <https://www.justice.gov/opa/press-release/file/1175791/download>.

¹⁵ Adam Dobrik, *Fresenius Monitor Selection Adds to Evidence of Changing Attitudes*, GLOBAL INVESTIGATIONS REVIEW, Oct. 31, 2019, <https://globalinvestigationsreview.com/article/jac/1210335/fresenius-monitor-selection-adds-to-evidence-of-changing-attitudes>.

¹⁶ Adam Dobrik, *Fresenius Monitor Selection Adds to Evidence of Changing Attitudes*, GLOBAL INVESTIGATIONS REVIEW, Oct. 31, 2019, <https://globalinvestigationsreview.com/article/jac/1210335/fresenius-monitor-selection-adds-to-evidence-of-changing-attitudes>.

¹⁷ *Tokar v. DOJ*, 304 F. Supp. 3d 81, 102 (D.D.C. 2018).

¹⁸ WilmerHale, *Global Anti-Bribery Year-in-Review: 2018 Developments and Predictions for 2019*, at 56 (Jan. 17, 2019), <https://www.wilmerhale.com/en/insights/client-alerts/20190117-global-anti-bribery-year-in-review-2018-developments-and-predictions-for-2019>.

former government officials.¹⁹ Indeed, since 2004, monitorships have been awarded to forty white men, three white women, and three non-white men.²⁰

B. Notable Features of Individual Resolutions Involving Latin America

1. A Continued Focus on Prosecution of Individuals

DOJ officials continued to emphasize that individual prosecutions remain a priority. Indeed, individuals continue to be charged years after investigations are opened into corporations, and in some instances, even years after those corporate inquiries are resolved, when the individuals and corporations are involved in the same core misconduct. Notably, as in the case of the long-running, cross-jurisdictional investigation into PDVSA of Venezuela, resolutions with individuals have occurred while investigations against their related entities are still reportedly ongoing, demonstrating US authorities' commitment to prosecuting the individuals most culpable for broader corporate misconduct.

a. PDVSA and PetroEcuador

PDVSA and PetroEcuador, large, state-owned oil companies in Venezuela and Ecuador, respectively, have been subject to sprawling investigations in recent years into kickbacks paid to government officials in exchange for favorable contracts.²¹ These investigations are being conducted by the DOJ and enforcement authorities in Venezuela and Ecuador.²² Despite the fact that the investigations are years old, each resulted in new indictments during 2019, as well as guilty pleas by individuals facing charges in federal courts in Miami²³ and Houston.²⁴

b. Odebrecht and Braskem

In 2016, Odebrecht, the Brazilian construction and engineering conglomerate, and its subsidiary Braskem pleaded guilty to FCPA-related charges and settled with global authorities, resolving charges for a decades-long bribery and bid-rigging scheme that spanned Latin America.²⁵ In a February 2019 indictment, unsealed nine months later, DOJ charged the former CEO of Braskem with two FCPA-related charges and one count of conspiracy to commit money laundering for his role in organizing hundreds of millions of dollars' worth of bribes on behalf of Braskem's part owner, Odebrecht.²⁶ The criminal case is ongoing in federal court in New York.

2. Foreign Officials Continue to Face Non-FCPA Charges in FCPA Enforcement Actions

The DOJ brought actions against seven former foreign government officials in 2019. None of these defendants faced FCPA offenses because, unlike many other bribery statutes, the FCPA does not prohibit the

¹⁹ Dylan Tokar, *DOJ Records Offer Window into Lucrative World of FCPA Monitorships*, GLOBAL INVESTIGATIONS REVIEW, July 2, 2018, <https://globalinvestigationsreview.com/article/jac/1171163/doj-records-offer-window-into-lucrative-world-of-fcpa-monitorship>.

²⁰ Clara Hudson, *Lawyers Laud Criminal Division's Diversity Provision for Monitors*, GLOBAL INVESTIGATIONS REVIEW, May 3, 2018, <https://globalinvestigationsreview.com/article/jac/1168991/lawyers-laud-criminal-divisions-diversity-provision-for-monitors>.

²¹ WilmerHale, *Foreign Corrupt Practices Act Alert: Global Anti-Bribery Year-in-Review: 2018 Developments and Predictions for 2019* (Jan. 17, 2019), <https://www.wilmerhale.com/en/insights/client-alerts/20190117-global-anti-bribery-year-in-review-2018-developments-and-predictions-for-2019>.

²² WilmerHale, *Foreign Corrupt Practices Act Alert: Global Anti-Bribery Year-in-Review: 2018 Developments and Predictions for 2019* (Jan. 17, 2019), <https://www.wilmerhale.com/en/insights/client-alerts/20190117-global-anti-bribery-year-in-review-2018-developments-and-predictions-for-2019>.

²³ *United States v. Armengol Alfonso Cevallos Diaz and Alarcon*, No. 19-20284-RS (S.D. Fla. May 9, 2019); Factual Proffer in Support of Guilty Plea, *United States v. Frank Roberto Chatburn Ripalda*, No. 1:18-cr-20312-MGC, at 1-2 (S.D. Fla. Oct. 11, 2019).

²⁴ *US v. Rafael E. Pinto Franceschi and Franz H. Muller Huber*, No. 4:19-CR-00135 (S.D. Tex. Feb. 21, 2019); *US v. Nervis G. Villalobos-Cardenas, Alejandro Isturiz-Chiesa, Rafael E. Reiter-Munoz, Javier Alvarado-Ochoa, Daisy T. Rafoi-Bleuler, and Paulo J.D.C. Casqueiro-Murta*, No. 4:17-cr-00514 (S.D. Tex. Apr. 24, 2019).

²⁵ Plea Agreement, *United States v. Odebrecht S.A.*, No. 16-CR-643-RJD (E.D.N.Y. Dec. 21, 2016); Plea Agreement, *United States v. Braskem S.A.*, No. 16-CR-644-RJD (E.D.N.Y. Dec. 21, 2016).

²⁶ Indictment, *United States v. Jose Carlos Grubisich*, No. 19-CR-102-RJD (E.D.N.Y. Feb. 27, 2019); US Attorney's Office for the Eastern District of New York Press Release: Former CEO of Braskem Indicted for His Role in Bribery Scheme (Nov. 20, 2019).

acceptance of bribes by foreign officials. Thus, foreign officials who allegedly accept bribes are often charged under other US federal statutes, such as the money laundering or wire fraud provisions. For example, two officials at Corpoelec, a Venezuelan state-controlled electricity company, were indicted in June 2019 for laundering the proceeds of bribes they received in exchange for awarding Corpoelec contracts. The defendants—the former Venezuelan Minister of Electrical Energy and head of Corpoelec, as well as the procurement director of Corpoelec—were charged in Florida with conspiracy to commit money laundering and money laundering.²⁷ Between 2016 and 2018, both defendants allegedly awarded more than \$60 million in Corpoelec contracts to three Florida-based companies from which they received kickbacks totaling approximately \$700,000 each.²⁸ In addition, the two businessmen who allegedly bribed the Venezuelan officials pleaded guilty to conspiracy to violate the FCPA in June 2019 and both were sentenced to 51 months in federal prison.²⁹

III. COUNTRY-SPECIFIC DEVELOPMENTS IN LATIN AMERICA

A. Brazil

January 2019 marked the beginning of President Jair Bolsonaro's new administration, and, as expected, Bolsonaro launched his presidency with the promise of stamping out corruption in Brazil, an issue upon which he had campaigned during the election. Together with his Minister of Justice Sergio Moro—the former judge who had overseen the massive “Operation Car Wash” investigation in Brazil—Bolsonaro began his term by introducing a broad anti-crime package establishing “measures against corruption, organized crime and crimes committed with serious violence.”³⁰ Although not yet passed, the anti-crime bill aims to establish greater protections and incentives for whistleblowers and enables the expanded use in Brazil of DPAs, settlements, and conciliations.³¹

Despite these attempts to fulfil his anti-corruption campaign promises, the Bolsonaro administration has faced its own allegations of corruption in connection with Operation Car Wash. In June, *The Intercept* published a bombshell report accusing Moro of abusing his power during the time when he presided over Operation Car Wash.³² The report, based on a leaked archive of secret documents, alleged that then-Judge Moro colluded with federal prosecutors to use Operation Car Wash as a tool to target Bolsonaro's predecessor and political opponent, Lula da Silva, and to help Bolsonaro win the 2018 election.³³ *The Intercept* published another report accusing the lead prosecutor behind Operation Car Wash, Deltan Dallagnol, of being paid for an off-the-record speaking engagement to a company under investigation in the probe.³⁴ In the wake of these reports, many called for Moro to resign as Minister of Justice.³⁵ While Moro has refused to step down, the allegations surrounding Moro have opened the door for da

²⁷ US Department of Justice Press Release No. 19-723: Two Former Venezuelan Officials Charged and Two Businessmen Plead Guilty in Connection with Venezuela Bribery Scheme (June 27, 2019).

²⁸ US Department of Justice Press Release No. 19-723: Two Former Venezuelan Officials Charged and Two Businessmen Plead Guilty in Connection with Venezuela Bribery Scheme (June 27, 2019); Indictment, *United States v. Luis Alfredo Motta Dominguez and Eustoquio Jose Lugo Gomez*, No. 19-20388-CR-MARTINEZ/OTAZO-REYES, at 8-9 (S.D. Fla. June 28, 2019).

²⁹ US Department of Justice Press Release No. 19-723: Two Former Venezuelan Officials Charged and Two Businessmen Plead Guilty in Connection with Venezuela Bribery Scheme (June 27, 2019); Judgment, *United States v. Haddad*, Case No. 19-CR-20351-CMA (S.D. Fla. Sept. 26, 2019); Judgment, *United States v. Veroes*, No. 19-CR-20351-CMA-2 (S.D. Fla. Oct. 29, 2019).

³⁰ Lucas Zaroni, New Brazil Bill Seeks to Add NPAs and Whistleblower Rewards, THE FCPA BLOG (Feb. 15, 2019, 1:02 PM), <https://fcpablog.com/2019/02/15/new-brazil-bill-seeks-to-add-npas-and-whistleblower-rewards/>.

³¹ Lucas Zaroni, New Brazil Bill Seeks to Add NPAs and Whistleblower Rewards, THE FCPA BLOG (Feb. 15, 2019, 1:02 PM), <https://fcpablog.com/2019/02/15/new-brazil-bill-seeks-to-add-npas-and-whistleblower-rewards/>.

³² Glenn Greenwald & Victor Pougny, *Hidden Plot, Exclusive: Brazil's Top Prosecutors Who Indicted Lula Schemed in Secret Messages to Prevent His Party From Winning 2018 Election*, THE INTERCEPT, June 9, 2019, <https://theintercept.com/2019/06/09/brazil-car-wash-prosecutors-workers-party-lula/>.

³³ Andrew Fishman, Rafael Moro Martins, et al., *Breach of Ethics, Exclusive: Leaked Chats Between Brazilian Judge and Prosecutor Who Imprisoned Lula Reveal Prohibited Collaboration and Doubts Over Evidence*, THE INTERCEPT, June 9, 2019, <https://theintercept.com/2019/06/09/brazil-lula-operation-car-wash-sergio-moro/>.

³⁴ Andrew Fishman, Leandro Demori, et al., *“The Risk is Well Paid LOL”: Brazilian Anti-Corruption Prosecutor Gave Secret Talk to Bankers and Took Money From a Company He Was Investigating*, THE INTERCEPT, July 26, 2019, <https://theintercept.com/2019/07/26/brazil-car-wash-deltan-dallagnol-paid-speaking/>.

³⁵ Tom Phillips, *Brazil: Calls Grow for Bolsonaro Ally to Quit After ‘Devastating’ Report on Leaks*, THE GUARDIAN, July 5, 2019, <https://www.theguardian.com/world/2019/jul/05/brazil-sergio-moro-jair-bolsonaro-justice-minister>.

Silva to once again appeal his conviction on the grounds of bias—a challenge that is still under consideration by the Supreme Court.³⁶

In addition to the allegations against Moro and Dallagnol, the Brazilian government has suffered several high-profile legal setbacks in 2019 in carrying out Operation Car Wash. In August, the Supreme Court overturned the conviction of Aldemir Bendine, a former president of Petrobras, on procedural grounds.³⁷ The Supreme Court held that Bendine was not properly given the opportunity to make a closing argument after hearing accusations against him from plea-bargain testimony.³⁸ This procedural annulment of Bendine's conviction is the first of its kind during the investigation, and if similar reasoning is applied to other defendants in the case, as many as 32 sentences involving 143 of the 162 people sentenced in the case could be overturned.³⁹

B. Mexico

In December 2018, Mexico swore in a new president, Andrés Manuel López Obrador, who, like Brazil's Bolsonaro, campaigned on an anti-corruption platform.⁴⁰ The first high-profile anti-bribery charges his administration filed related to the national oil company Pemex (Petróleos Mexicanos).⁴¹ In May, Mexican investigators filed charges with Mexican federal prosecutors against former Pemex CEO Emilio Lozoya, alleging that he accepted \$10 million in bribes from a Brazilian company in connection with Pemex's 2014 purchase of a fertilizer plant.⁴² The following day, Spanish police arrested the chairman of the largest integrated steel producer in Mexico, in connection with the same probe.⁴³ Pemex purchased the fertilizer plant for \$273 million dollars—\$92 million more than a Mexican government agency's assessment of its value at the time.⁴⁴ The government is also expected to file charges against Lozoya in connection with the purchase of a second fertilizer company, Grupo Fertinal.⁴⁵

³⁶ Ricardo Brito, *Back to Jail, or Run for President: The Legal Maze Facing Brazil's Lula*, REUTERS, Nov. 11, 2019, <https://www.reuters.com/article/us-brazil-corruption-lula/back-to-jail-or-run-for-president-the-legal-maze-facing-brazils-lula-idUSKBN1XL2FO>; *Brazil Ex-President, Out of Jail, Vows to Make 'Lives Hell'*, NEW YORK TIMES POST, Nov. 23, 2019, <https://nytimespost.com/brazils-ex-president-vows-to-make-right-wing-leaders-lives-a-living-hell/>.

³⁷ Ricardo Brito, *Brazil 'Car Wash' Corruption Probe Facing 'Worst Moment' as Establishment Fights Back*, REUTERS, Sept. 4, 2019, <https://www.reuters.com/article/us-brazil-corruption-analysis/brazil-car-wash-corruption-probe-facing-worst-moment-as-establishment-fights-back-idUSKCN1VP2SR>.

³⁸ Ricardo Brito, *Brazil 'Car Wash' Corruption Probe Facing 'Worst Moment' as Establishment Fights Back*, REUTERS, Sept. 4, 2019, <https://www.reuters.com/article/us-brazil-corruption-analysis/brazil-car-wash-corruption-probe-facing-worst-moment-as-establishment-fights-back-idUSKCN1VP2SR>.

³⁹ Ricardo Brito & Tatiana Bautzer, *Brazil's Supreme Court Approves Ruling that May Overturn Corruption Convictions*, REUTERS, Sept. 26, 2019, <https://www.reuters.com/article/brazil-corruption-supreme-court/brazils-supreme-court-approves-ruling-that-may-overturn-corruption-convictions-idUSL2N26H2BG>.

⁴⁰ Lizbeth Diaz & Diego Ore, *Mexico Leftist Open to International Help, Truth Commission*, REUTERS, May 8, 2019, <https://www.reuters.com/article/us-mexico-election-violence/mexico-leftist-open-to-international-help-truth-commission-idUSKBN1I93JA>; Juan Montes, *Mexico's New Leader Takes Office Vowing a Bigger State Role in the Economy*, WALL ST. J., last updated Dec. 1, 2018, <https://www.wsj.com/articles/mexicos-new-leader-takes-office-facing-migrant-crisis-market-selloff-1543686085>.

⁴¹ See generally Robbie Whelan, *Secret Recordings Describe Extensive Bribery at Mexico's Pemex*, WALL ST. J., Oct. 11, 2019, <https://www.wsj.com/articles/secret-recordings-describe-extensive-bribery-at-mexicos-pemex-11570804717>; David Luhnnow & Juan Montes, *Decrepit Factory Becomes Symbol of Mexican Corruption Battle*, WALL ST. J., June 4, 2019, <https://www.wsj.com/articles/decrepit-factory-becomes-symbol-of-mexican-corruption-battle-11559657455>.

⁴² Anthony Harrup & Juan Montes, *Former Executive in Mexico Is Charged*, WALL ST. J., May 28, 2019; 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>.

⁴³ David Luhnnow & Juan Montes, *Steel Executive Seized in Spain in Mexican Corruption Case Tied to Pemex*, WALL ST. J., May 28, 2019, <https://www.wsj.com/articles/steel-executive-seized-in-spain-in-mexican-corruption-case-tied-to-pemex-11559089071>; AHMSA Press Release: Altos Hornos Updates on Operating and Financial Normalization Process (Sept. 20, 2019), <https://www.globenewswire.com/news-release/2019/09/20/1918747/0/en/Altos-Hornos-Updates-on-Operating-and-Financial-Normalization-Process.html>.

⁴⁴ David Luhnnow & Juan Montes, *Decrepit Factory Becomes Symbol of Mexican Corruption Battle*, WALL ST. J., June 4, 2019, <https://www.wsj.com/articles/decrepit-factory-becomes-symbol-of-mexican-corruption-battle-11559657455>.

⁴⁵ Juan Montes, *Mexico Prepares New Charges Against Former Pemex Boss*, WALL ST. J., Aug. 20, 2019, <http://www.wsj.com/articles/mexico-prepares-new-charges-against-former-pemex-boss-11566346498>.

2019 also saw the appointment of Mexico's first Chief Anticorruption Prosecutor.⁴⁶ In the nine months following her appointment, Luz Mijangos Borja's office has initiated nearly 700 anti-corruption investigations.⁴⁷ Mijangos Borja is also a member of the coordinating committee for Mexico's still-new National Anticorruption System, which was established in 2016.⁴⁸ Criminal cases against entities identified in the corruption scandal known as "La Estafa Maestra" ("The Master Fraud") also moved forward in 2019.⁴⁹ The scandal involves the funneling of nearly \$200 million worth of government funds through public universities and shell companies.⁵⁰ Although the first criminal case in La Estafa Maestra was filed four years ago,⁵¹ the prosecutions had stalled under the previous administration.⁵²

Earlier in 2019, López Obrador pledged to create an entity called the Instituto para Devolverle al Pueblo lo Robado (IDPR).⁵³ The IDPR's mandate would be to redistribute the proceeds of seized assets to fund social programs throughout the country.⁵⁴ Critics argue that there is little evidence the proceeds of such forfeitures would be earmarked as intended, rather than absorbed into the general treasury where they would represent an insignificant percentage of the federal budget.⁵⁵ In October, rather than actually create a new agency, the Mexican Chamber of Deputies voted to simply rename the existing Service of Administration and Disposal of Assets as the new "IDPR".⁵⁶ It is not yet clear whether this change will lead to any substantive improvements in how the institute operates.

The López Obrador administration has also expanded the Mexican government's asset forfeiture powers. In March, Mexico amended its constitution to remove several impediments to asset forfeiture.⁵⁷ In August, Mexico's congress passed the Ley de Extinción de Dominio,⁵⁸ which adds corruption, money laundering, and other crimes to the list of activities for which forfeiture proceedings may be pursued.⁵⁹ And in October, the federal Attorney General's

⁴⁶ Brandt Liebe, Grant Nichols, Luke Fields, *INSIGHT: Watching U.S. Anti-Corruption Efforts in Latin America*, BLOOMBERG LAW, Sept. 24, 2019, <https://news.bloomberglaw.com/white-collar-and-criminal-law/insight-watching-u-s-anti-corruption-efforts-in-latin-america>.

⁴⁷ Luis Dantón Martínez Corres, *New Corruption Prosecutor Opens 680 Investigations*, THE FCPA BLOG, (Dec. 18, 2019, 7:48 AM), <https://fcpablog.com/2019/12/18/new-corruption-prosecutor-opens-680-investigations/>.

⁴⁸ Brandt Liebe, Grant Nichols, Luke Fields, *INSIGHT: Watching U.S. Anti-Corruption Efforts in Latin America*, BLOOMBERG LAW, Sept. 24, 2019, <https://news.bloomberglaw.com/white-collar-and-criminal-law/insight-watching-u-s-anti-corruption-efforts-in-latin-america>.

⁴⁹ Gina Hinojosa, *What's Happening with Mexico's National Anti-Corruption System? Progress and Continued Challenges at the Federal and State Level*, WOLA, Oct. 28, 2019, <https://www.wola.org/analysis/progress-challenges-corruption-mexico/>.

⁵⁰ Gina Hinojosa, *What's Happening with Mexico's National Anti-Corruption System? Progress and Continued Challenges at the Federal and State Level*, WOLA, Oct. 28, 2019, <https://www.wola.org/analysis/progress-challenges-corruption-mexico/>.

⁵¹ Gina Hinojosa, *What's Happening with Mexico's National Anti-Corruption System? Progress and Continued Challenges at the Federal and State Level*, WOLA, Oct. 28, 2019, <https://www.wola.org/analysis/progress-challenges-corruption-mexico/>.

⁵² Gina Hinojosa, *What's Happening with Mexico's National Anti-Corruption System? Progress and Continued Challenges at the Federal and State Level*, WOLA, Oct. 28, 2019, <https://www.wola.org/analysis/progress-challenges-corruption-mexico/>.

⁵³ Patrick Corcoran, *Mexico's Criminal Asset Forfeiture Plan Faces Teething Problems*, INSIGHT CRIME, May 29, 2019, <https://www.insightcrime.org/news/analysis/mexicos-criminal-asset-forfeiture-teething-problems/>.

⁵⁴ Patrick Corcoran, *Mexico's Criminal Asset Forfeiture Plan Faces Teething Problems*, INSIGHT CRIME, May 29, 2019, <https://www.insightcrime.org/news/analysis/mexicos-criminal-asset-forfeiture-teething-problems/>.

⁵⁵ Patrick Corcoran, *Mexico's Criminal Asset Forfeiture Plan Faces Teething Problems*, INSIGHT CRIME, May 29, 2019, <https://www.insightcrime.org/news/analysis/mexicos-criminal-asset-forfeiture-teething-problems/>.

⁵⁶ Iván E. Saldaña & Ximena Mejía, *Rebautizan al ExSAE como Instituto para Devolver al Pueblo lo Robado*, EXCELSIOR, Oct. 15, 2019, <https://www.excelsior.com.mx/nacional/rebautizan-al-exsae-como-instituto-para-devolver-al-pueblo-lo-robado/1342100>.

⁵⁷ Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, Art. 22, últimas reformas DOF 14-03-2019 (Mex.); Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, Art. 73, últimas reformas DOF 15-05-2019 (Mex.).

⁵⁸ Decreto por el que se expide la Ley Nacional de Extinción de Dominio, Diario Oficial de la Federación [DOF] 09-08-2019 (Mex.).

⁵⁹ Decreto por el que se expide la Ley Nacional de Extinción de Dominio, Diario Oficial de la Federación [DOF] 09-08-2019 (Mex.).

office created a unit specializing in asset forfeiture.⁶⁰ Critics argue that the new law would potentially allow the seizure of assets from owners who have no knowledge that the assets were used for illegal purposes.⁶¹

C. Argentina

After months of discussions, on June 19, 2019, Argentina ratified a landmark information-sharing agreement with Brazil, entered into by the Brazilian and Argentinian Attorney General's Offices. The agreement allows Argentinian prosecutors to use evidence from their Brazilian counterparts in cases linked to the Odebrecht investigations.⁶² This cooperation agreement was designed to help Argentinian prosecutors launch their own investigations into Odebrecht using evidence from collaboration agreements that Odebrecht's former employees signed with Brazilian prosecutors.⁶³ Weeks later, the Argentinian government commenced a trial against the former Minister of Public Works over corruption charges related to an alleged \$2.3 billion worth of contracts awarded to Odebrecht in 2006.⁶⁴

Argentinian prosecutors also continue to investigate the Cuadernos Scandal, an investigation into several bribes made for public works contracts which has been predicted to become "Argentina's Operation Car Wash."⁶⁵ In April, Argentinian prosecutors petitioned the judge in charge of the case to open a parallel investigation into alleged money laundering committed by the businesspersons involved in the contracts, after discovering the existence of multiple bank accounts in Argentina and other countries.⁶⁶

D. World Bank and Inter-American Development Bank

In fiscal year 2019, the World Bank debarred 48 firms and individuals.⁶⁷ Most notably, Brazil-based engineering and construction company Odebrecht was debarred in early 2019 for engaging in fraudulent and collusive practices in Colombia.⁶⁸ The World Bank also debarred several Odebrecht subsidiaries based in numerous countries including Chile, Colombia, Panama, Peru, and the United States.⁶⁹ Later in 2019, the Inter-American Development Bank followed suit and debarred 20 Odebrecht subsidiaries for bribing public officials.⁷⁰

⁶⁰ Acuerdo A/016/19 por el que se establece la organización y funcionamiento de la Unidad Especializada en materia de Extinción de Dominio de la Fiscalía General de la República, Diario Oficial de la Federación [DOF] 01-10-2019 (Mex.).

⁶¹ *Mexican Rights Agency Objects to Assets Seizure Law*, ASSOCIATED PRESS, Sept. 27, 2019, <https://apnews.com/ae599f1b97fe4e439ff84d41466d204f>.

⁶² Emily Casswell, *Brazil-Argentina Odebrecht collaboration agreement gets green light*, GLOBAL INVESTIGATIONS REVIEW, June 26, 2019, <https://globalinvestigationsreview.com/article/1194538/brazil-argentina-odebrecht-collaboration-agreement-gets-green-light>.; Fabio Ferrer, *La fiscalía podrá usar pruebas del Lava Jato y Odebrecht en la causa por el soterramiento del Sarmiento*, INFOBAE, June 19, 2019, <https://www.infobae.com/politica/2019/06/19/la-fiscalia-podra-usar-pruebas-del-lava-jato-y-odebrecht-en-la-causa-por-el-soterramiento-del-sarmiento>.

⁶³ Fabio Ferrer, *La fiscalía podrá usar pruebas del Lava Jato y Odebrecht en la causa por el soterramiento del Sarmiento*, INFOBAE.

⁶⁴ Nicolás Misculin, Hugh Bronstein, and Leslie Alder, *Odebrecht corruption case against ex Argentine minister heads to trial*, REUTERS, June 27, 2019, <https://www.reuters.com/article/us-argentina-corruption-odebrecht/odebrecht-corruption-case-against-ex-argentine-minister-heads-to-trial-idUSKCN1TS371>.

⁶⁵ Maximiliano N. D'Auro, Francisco Grosso, & Virginia Frangella, *Will the Notebooks Scandal Be Argentina's Operation Carwash?*, THE ANTI-CORRUPTION REPORT, Nov. 14, 2018.

⁶⁶ *La UIF - Querellante en la causa de los cuadernos*, GOBIERNO DE LA REPÚBLICA ARGENTINA, Apr. 12, 2019, <https://www.argentina.gob.ar/noticias/la-uif-querellante-en-la-causa-de-los-cuadernos>.

⁶⁷ World Bank Press Release No. 2020/053/INT: World Bank Group Debarred 48 Firms and Individuals during Fiscal Year 2019 (Oct. 10, 2019), <https://www.worldbank.org/en/news/press-release/2019/10/10/world-bank-group-debarred-48-firms-and-individuals-during-fiscal-year-2019>.

⁶⁸ Richard L. Cassin, World Bank debars Odebrecht construction units for fraud and collusion, THE FCPA BLOG (Jan. 29, 2019, 4:08 PM), <https://fcpublog.com/2019/1/29/world-bank-debars-odebrecht-construction-units-for-fraud-and/>.

⁶⁹ Richard L. Cassin, World Bank debars Odebrecht construction units for fraud and collusion, THE FCPA BLOG (Jan. 29, 2019, 4:08 PM), <https://fcpublog.com/2019/1/29/world-bank-debars-odebrecht-construction-units-for-fraud-and/>.

⁷⁰ Richard L. Cassin, Inter-American Development Bank debars Odebrecht units for massive bribery, THE FCPA BLOG (Sept. 4, 2019, 3:58 PM), <https://fcpublog.com/2019/9/4/inter-american-development-bank-debars-odebrecht-units-for-m/>.

IV. CONCLUSIONS AND PREDICTIONS FOR 2020

As we look ahead to 2020, we predict that FCPA enforcement will continue to be a high priority for DOJ and the SEC and that the level of FCPA enforcement activity in Latin America will remain at the high levels we have seen in recent years.

For example, in August 2019, Avianca Holdings (Avianca), Colombia's national airline, announced that it had voluntarily disclosed potential violations of the FCPA to the DOJ, the SEC, and Colombia's financial regulator, and that it was conducting an internal investigation.⁷¹ Avianca's investigation is apparently focused on whether airline employees, potentially including senior management and directors, were providing free and discounted airline tickets and upgrades to government employees.⁷² Avianca's disclosure represents at least the third major foreign bribery investigation into conduct by Latin American airlines over the past several years, in addition to a number of smaller aviation industry resolutions and ongoing investigations focused on Latin American operations.⁷³

Moreover, several trends that we have seen develop and evolve over the last few years look set to continue. For example, large cross-border investigations appear likely to feature heavily in 2020 enforcement activity once again, as investigations linked to numerous such matters, including PDVSA and Petrobras, remain active. Similarly, DOJ leadership continues to emphasize the prioritization of individual prosecutions, suggesting that this will remain a focus for the Department's FCPA unit in 2020.

Finally, efforts by Latin American governments to pursue corruption cases within their borders seem likely to continue, with increased cross-border cooperation between prosecutors, as seen in the recent information-sharing agreement between Argentina and Brazil, and new anti-corruption initiatives in countries such as Mexico.

⁷¹ Avianca Holdings, Bi-Annual Report (Form 6-K, Exhibit 99.1) (Aug. 15, 2019), <https://www.sec.gov/Archives/edgar/data/1575969/000119312519221753/d792613dex991.htm>.

⁷² Avianca Holdings, Bi-Annual Report (Form 6-K, Exhibit 99.1) (Aug. 15, 2019), <https://www.sec.gov/Archives/edgar/data/1575969/000119312519222634/d568407dex991.htm>.

⁷³ US Department of Justice Press Release No. 16-862: 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>; Gol Intelligent Airlines, Inc., Annual Report (Form 20-F) (May 1, 2017), https://www.sec.gov/Archives/edgar/data/1291733/000129281417001139/golform20f_2016.htm.