
Latin America Anti-Bribery Year-in-Review: 2020 Developments and Predictions for 2021

March 2021

I. INTRODUCTION

Despite the impacts of the COVID-19 pandemic, 2020 was an active year for Foreign Corrupt Practices Act (FCPA) enforcement—and anti-corruption enforcement more generally. Enforcement actions related to Latin America played a particularly prominent role, with many of the cases investigated and resolved by U.S. regulators involving companies operating in Latin America, and high-profile corruption scandals arising in several Latin American countries. Although the number of U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) enforcement actions was down in 2020 from recent years, the DOJ and SEC both remained active, making 2020 a record-breaking year with well over \$6 billion in FCPA penalties.

In addition, as Latin American governments focused this past year on the COVID-19 pandemic and its effects, observers throughout the Western Hemisphere raised concerns over the heightened risk of increased levels of corruption in the pandemic response.¹ These warnings have proved accurate, as corruption scandals have emerged from the recent procurement practices of the health ministries of several Latin American countries. In the most striking example, the Bolivian health minister was arrested amid allegations that his agency purchased 170 ventilators at the inflated price of nearly \$28,000 each, when the manufacturer in Spain contends that it sold those same ventilators to a distributor for only \$6,500.² Similarly, a top advisor to the vice president of Panama resigned after prosecutors began investigating the Panamanian government's planned purchase of 100 ventilators at nearly \$50,000 each.³ In addition, government officials in Argentina, Brazil and Colombia were each investigated for pandemic-related corruption

¹ *Status of Latin America's Anti-corruption Fight amid Health and Political Challenges*, CONG. RESEARCH SERV. (Apr. 21, 2020), <https://fas.org/sgp/crs/row/IN11350.pdf>.

² Joshua Goodman, *Spread of Coronavirus Fuels Corruption in Latin America*, AP NEWS (May 27, 2020), <https://apnews.com/article/a240ff413fb23220aff30c6d6e6aba4c>.

³ Joshua Goodman, *Spread of Coronavirus Fuels Corruption in Latin America*, AP NEWS (May 27, 2020), <https://apnews.com/article/a240ff413fb23220aff30c6d6e6aba4c>.

in 2020, with alleged misconduct ranging from embezzling public healthcare funds intended to build field hospitals for COVID-19 patients to directing government agencies to purchase expired and dramatically overpriced N95 surgical masks from a politically connected vendor.⁴

This alert summarizes key 2020 anti-bribery enforcement developments in Latin America and concludes with predictions for 2021. For a comprehensive review of global developments, please refer to WilmerHale's [FCPA Alert: Global Anti-Bribery Year-in-Review](#) for 2020.

II. 2020 ENFORCEMENT TRENDS AND KEY DEVELOPMENTS FOR U.S. REGULATORS

A. Record-Breaking Year in Overall FCPA Penalties

The quantity of FCPA enforcement actions decreased during 2020, likely due at least in part to the COVID-19 pandemic and the attendant logistical difficulties posed in overseas investigations. The total number of corporate enforcement actions⁵ dropped from 20 in 2019 to 16 in 2020. Despite this, 2020 was far and away the biggest year on record for FCPA financial penalties, with total penalties more than double those of 2019, which was itself a record high. While monetary penalties imposed by U.S. authorities on corporations for FCPA-related conduct⁶ totaled \$2.9 billion in 2019, corporate monetary penalties in 2020 totaled \$6.4 billion.

B. Ongoing Cooperation by U.S. Regulators and Law Enforcement in Latin America

Continuing a trend that predates the COVID-19 pandemic, U.S. authorities have maintained their extensive cooperation with foreign law enforcement, especially in South America. Noteworthy resolutions in 2020 involving international cooperation included the DOJ's resolutions with Sargeant Marine Inc., which cited cooperation with the Ministerio Publico Federal in Brazil,⁷ the DOJ's crediting of up to 33% of Vitol Inc.'s criminal penalty for payments made to Brazilian authorities to resolve a parallel investigation by the Ministerio Publico Federal,⁸ and the DOJ's crediting of up to 50% of J&F Investimentos S.A.'s criminal penalty for payments made to Brazilian authorities as

⁴ Joshua Goodman, *Spread of Coronavirus Fuels Corruption in Latin America*, AP NEWS (May 27, 2020), <https://apnews.com/article/a240ff413fb23220aff30c6d6e6aba4c>.

⁵ To determine the number of corporate enforcement actions for the year, we counted enforcement actions brought by the SEC and DOJ separately (e.g., parallel settlements with the same entity by the SEC and DOJ count as two actions). However, actions brought by a single agency against related corporate entities (e.g., a parent and subsidiary) for the same core conduct count as only one action. Declinations and case closures are not included within this metric.

⁶ To calculate total monetary penalties imposed in FCPA-related actions against companies, we counted the amounts set out in resolution papers that a settling party could be liable to pay to U.S. enforcement agencies, even if those penalties were ultimately offset by payments to other entities (e.g., foreign authorities).

⁷ U.S. Department of Justice Press Release No. 20-983: Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador (Sept. 22, 2020).

⁸ U.S. Department of Justice Press Release No. 20-1310: Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Case (Dec. 3, 2020).

part of an earlier enforcement action.⁹ This continued global law enforcement coordination serves as a reminder that companies and counsel would do well to consider preparing early for potential parallel investigations by multiple law enforcement authorities when planning FCPA investigation and remediation efforts.

C. Rare Corporate Guilty Plea by a U.S. Parent Company for Bribes Paid in Brazil, Venezuela and Ecuador

FCPA resolutions in 2020 included a rare guilty plea by a US-based parent corporation. In September 2020, US-based corporate parent Sargeant Marine entered into a guilty plea with the DOJ, which typically happens with U.S. subsidiaries of foreign companies rather than with the parent corporations themselves.¹⁰ Sargeant Marine, an asphalt company, pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA in connection with bribes paid through employees and agents to foreign officials in Brazil, Venezuela and Ecuador.¹¹ To settle the charges, the company agreed to pay \$16.6 million, periodically report on remediation and compliance measures for three years, and integrate data analysis into its compliance program sufficient to allow compliance personnel to engage in “timely and effective monitoring and/or testing of transactions” and “a thoughtful root cause analysis.”¹² While unusual, the guilty plea by the U.S. parent likely was due to Sargeant Marine being a smaller, nonpublic company, where specific improper conduct by a senior executive and part owner, among other employees, was identified in the investigation.

D. United States Enforcement Efforts Continue to Target Corruption in Brazil

In December 2020, Vitol agreed to pay a combined \$135 million to resolve a DOJ investigation into FCPA violations along with a parallel investigation in Brazil.¹³ The company also reached an agreement with the Brazilian government, under which it admitted guilt and agreed to make improvements to its internal reporting and compliance functions. Vitol acknowledged that over a period of 15 years it paid bribes of more than \$8 million to at least four officials at Brazil's state-owned oil company Petrobras. Vitol paid the bribes in exchange for receiving confidential pricing and competitor information. Vitol also admitted that from 2011 to 2014, it bribed at least five additional Petrobras officials in exchange for receiving confidential pricing information that it used to win fuel oil contracts with Petrobras. The DOJ credited \$45 million of the total penalty against the

⁹ U.S. Department of Justice Press Release No. 20-1092: J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case (Oct. 14, 2020).

¹⁰ Plea Agreement, *United States v. Sargeant Marine Inc.*, No. 20-CR-363 (E.D.N.Y. Sept. 22, 2020).

¹¹ U.S. Department of Justice Press Release No. 20-983: Sargeant Marine Inc. Pleads Guilty and Agrees to Pay Over \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador (Sept. 22, 2020).

¹² U.S. Department of Justice Press Release No. 20-983: Sargeant Marine Inc. Pleads Guilty and Agrees to Pay Over \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador (Sept. 22, 2020); Plea Agreement, *United States v. Sargeant Marine Inc.*, No. 20-CR-00363 (E.D.N.Y. Sept. 22, 2020).

¹³ U.S. Department of Justice Press Release No. 20-1310: Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Case (Dec. 3, 2020).

amount that Vitol paid to Petrobras to resolve the investigation by the Brazilian Ministério Público Federal for conduct related to the company's bribery scheme in Brazil.

At the same time as the DOJ resolution, the U.S. Commodity Futures Trading Commission (CFTC) also announced that it had filed and settled charges against Vitol for manipulative and deceptive conduct and related market manipulation.¹⁴ The CFTC's announcement of its \$95 million settlement with Vitol is the CFTC's first-ever enforcement resolution involving foreign corruption.

In October 2020, São Paulo-based conglomerate J&F, a global meat and protein producer, pleaded guilty to a charge of conspiracy to violate the FCPA for a scheme to bribe officials in Brazil, and agreed to pay a fine of \$256 million. According to the DOJ, J&F made payments to Brazilian officials between 2005 and 2017 to "ensure that Brazilian state-owned and state-controlled banks would enter into debt and equity financing transactions with J&F and J&F-owned entities"¹⁵ and to obtain permission for a merger from the state-owned pension fund. In its resolution with J&F, the DOJ gave only partial cooperation and remediation credit to the company, while also noting that the company did not voluntarily disclose its conduct.¹⁶ Simultaneously, a J&F majority-owned subsidiary, JBS S.A., agreed to pay the SEC disgorgement and prejudgment interest totaling about \$28.9 million in a related settlement. The parties also agreed to self-report for three years.¹⁷

E. New Initiative by U.S. Government to Target Corrupt Individuals in Central America

In December 2020, the U.S. Congress passed legislation entitled the "United States-Northern Triangle Enhanced Engagement Act"¹⁸ in the omnibus appropriations and COVID-19 relief package that was signed into law in the final days of the year.¹⁹ The legislation requires that by summer 2021, the Biden administration will publish of a list of corrupt and undemocratic individuals from Guatemala, Honduras and El Salvador who will be denied entry to the United States.²⁰

¹⁴ U.S. Commodities Future Trading Commission Release No. 8326-20: CFTC Orders Vitol Inc. to Pay \$95.7 Million for Corruption-Based Fraud and Attempted Manipulation (Dec. 3, 2020).

¹⁵ U.S. Department of Justice Press Release No. 20-1092: J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case (Oct. 14, 2020).

¹⁶ Plea Agreement, *United States v. J&F Investimentos SA*, No. 20-CR-00365, ¶¶ 7(a)-(c) (E.D.N.Y. Oct. 13, 2020).

¹⁷ U.S. Department of Justice Press Release No. 20-1092: J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case (Oct. 14, 2020).

¹⁸ The United States–Northern Triangle Enhanced Engagement Act, H.R. 2615, 116th Congress (Received in the Senate July 16, 2019).

¹⁹ Lisa Colvin, *Trump Signs Massive Measure Funding Government, COVID Relief*, ASSOCIATED PRESS (Dec. 27, 2020), <https://apnews.com/article/donald-trump-politics-coronavirus-pandemic-2a2645e52fda774ae8f1443b4dfc82e>.

²⁰ U.S. House of Representatives, Committee on Foreign Affairs, Press Release: Engel U.S.-Northern Triangle Enhanced Engagement Act Passes Congress (Dec. 22, 2020), <https://foreignaffairs.house.gov/press-releases?ID=87FA0088-D13D-45A8-912A-A59BBEEDFF07>.

III. 2020 ENFORCEMENT TRENDS ACROSS LATIN AMERICA

The enforcement agencies of various Latin American governments had both advances and setbacks during 2020 as they pursued anti-corruption enforcement actions.

A. Enforcement Trends and Key Development in Mexico

1. Enforcement Efforts

The year 2020 was the first full year of tenure for Mexico's first-ever Chief Anti-Corruption Prosecutor, María de la Luz Mijangos Borja,²¹ who was appointed in spring 2019.²² Thus far, the anti-corruption prosecutor's office has been underfunded, but it is set to receive a small boost to its FY2021 budget.²³ In a report to the Mexican Senate in spring 2020, Borja outlined challenges that her office has faced during its first full year in existence; for example, the office is undertaking nearly 1,000 corruption cases, but has only 36 prosecutors, 11 staff for managerial and administrative support, and two experts on criminology.²⁴ The office has been notably absent from certain high-profile corruption investigations that President Andrés Manuel Lopez Obrador's administration has launched,²⁵ and Borja's office likely will need expanded staffing and resources in the coming years as it seeks to address a growing list of high-profile investigations. For example, Borja's office recently undertook investigation of the former general secretary of President Lopez Obrador's own political party, the National Regeneration Movement (known by the acronym MORENA in Spanish).²⁶ The former party official is accused of making payments of \$19.65 million from party funds to companies owned by a politically connected business owner in exchange for "phantom" works and services that were never actually performed.²⁷

²¹ Directory of the Mexican Attorney General's Office, Titular de la Fiscalía Especializada en Combate a la Corrupción, <https://www.gob.mx/fgr/estructuras/maria-de-la-luz-mijangos-borja>.

²² 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/>.

²³ Maureen Meyer, *Mexico Faces a Test for Its Anti-Corruption and Justice Reform Efforts*, WOLA (Nov. 25, 2020), <https://www.wola.org/analysis/mexico-faces-test-anti-corruption-justice-reform-efforts/>.

²⁴ Maureen Meyer, *Mexico Faces a Test for Its Anti-Corruption and Justice Reform Efforts*, WOLA (Nov. 25, 2020), <https://www.wola.org/analysis/mexico-faces-test-anti-corruption-justice-reform-efforts/>.

²⁵ For example, the anti-corruption prosecution office has not been involved in the investigation of Emilio Lozoya; rather, the Public Prosecutor's Office has led the charge. See Martin Vivanco Lira, *Why the Lozoya Case Won't Be Mexico's Lava Jato*, AMERICAS QUARTERLY (Dec. 21, 2020), <https://americasquarterly.org/article/why-the-lozoya-case-wont-be-mexicos-lava-jato/>.

²⁶ Abel Barajas, *Llega transa de Morena a Fiscalía Anticorrupción*, LUCES DEL SIGLO (June 19, 2020), <https://lucsdelsiglo.com/2020/06/19/llega-transa-de-morena-a-fiscalia-anticorrupcion-nacional/>; Maureen Meyer, *Mexico Faces a Test for Its Anti-Corruption and Justice Reform Efforts*, WOLA (Nov. 25, 2020), <https://www.wola.org/analysis/mexico-faces-test-anti-corruption-justice-reform-efforts/>.

²⁷ Abel Barajas, *Llega transa de Morena a Fiscalía Anticorrupción*, LUCES DEL SIGLO (June 19, 2020), <https://lucsdelsiglo.com/2020/06/19/llega-transa-de-morena-a-fiscalia-anticorrupcion-nacional/>; Maureen Meyer, *Mexico Faces a Test for Its Anti-Corruption and Justice Reform Efforts*, WOLA (Nov. 25, 2020), <https://www.wola.org/analysis/mexico-faces-test-anti-corruption-justice-reform-efforts/>.

2. Other Legal Developments

The United States, Mexico, and Canada Trade Agreement (USMCA) entered into force in July 2020, following ratification by the three signatory countries.²⁸ The passage of the USMCA is significant, as the parties to the agreement now have a shared understanding on anti-corruption and compliance, as set forth in Chapter 27 of the USMCA.²⁹ Of note is the commitment of the three countries' anti-corruption law enforcement agencies to cooperate and coordinate with one another in cross-border investigations related to the three countries' anti-corruption laws.³⁰

B. Argentina and Paraguay

The FIFA-Gate scandal continues to wind its way through the court systems of several countries. One of the most interesting cases arising from Latin America relates to the return of \$41 million to the South American Soccer Confederation (CONMEBOL), which was secured by the Attorney General of Switzerland (OAG) in 2020.³¹ Among the various football-related investigations, the OAG opened criminal proceedings against the former president of CONMEBOL, Nicolás Leoz of Paraguay, and the former secretary general of CONMEBOL, Eduardo Deluca of Argentina. Both were alleged to have received bribes in exchange for the allocation of television broadcasting rights and other marketing rights for soccer competitions organized by CONMEBOL, including the Copa América and the Copa Libertadores.³²

In August 2019, Leoz died, before the Paraguayan Supreme Court could rule on his appeal of an extradition order that would have sent him to the United States to face conspiracy charges related to soccer corruption;³³ accordingly, the criminal proceedings against him in both Switzerland and the United States were abandoned. Deluca, on the other hand, was charged by the Swiss OAG

²⁸ Office of the United States Trade Representative, United States-Mexico-Canada Agreement, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>.

²⁹ Agreement between the United States of America, the United Mexican States, and Canada (July 1, 2020), Chapter 27, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³⁰ Agreement between the United States of America, the United Mexican States, and Canada (July 1, 2020), Chapter 27.9, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³¹ Office of the Attorney General of Switzerland Press Release, Football: Restitution of over CHF 36 million (Oct. 14, 2020), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-80692.html#:~:text=The%20funds%20forfeited%20between%20December,be%20returned%20directly%20to%20it>.

³² Agence France Presse, *Swiss Courts Return \$40 Million To CONMEBOL In Corruption Probe*, BARRON'S (Oct. 14, 2020), <https://www.barrons.com/articles/swiss-courts-return-40-million-to-conmebol-in-corruption-probe-01602676804>.

³³ Daniela Desantis, *South American Football Leader Leoz Dies While Awaiting Extradition to U.S.*, REUTERS (Aug. 29, 2019), <https://www.reuters.com/article/instant-article/idUKL2N25P0E9>; Rebecca R. Ruiz, *Nicolás Leoz, FIFA Official Charged in Corruption Scandal, Dies at 90*, N.Y. TIMES (Sept. 1, 2019), <https://www.nytimes.com/2019/09/01/obituaries/nicolas-leoz-dead.html>.

with complicity in multiple instances of aggravated criminal mismanagement.³⁴ However, in September 2020, the OAG abandoned criminal proceedings against Deluca to avoid double jeopardy, given the criminal proceedings conducted in Argentina³⁵ in relation to the same soccer corruption matter, for which there was significant cooperation among prosecutors in several countries.³⁶

Despite abandoning criminal proceedings against Leoz and Deluca, the Swiss OAG ordered various seizures of funds from Swiss bank accounts that belonged to the two men. CONMEBOL's recovery of \$41 million in restitution from Swiss authorities in 2020 follows several prior restitution awards from former soccer officials convicted by the DOJ in its far-reaching and ongoing "FIFA-Gate" investigation.³⁷ According to CONMEBOL, the organization has now recovered more than \$55 million in restitution from various sources, which is the largest sum of victim compensation received by any soccer organization or confederation involved in FIFA-Gate.³⁸

C. Colombia and Peru

In December 2020, regulators in Colombia fined the Brazilian conglomerate Odebrecht and affiliated construction companies approximately \$84.5 million stemming from similar corruption allegations for which the company originally pleaded guilty in U.S. federal court more than four years earlier.³⁹ In addition, prosecutors in Peru recently brought Odebrecht-related corruption and money laundering charges against the former Peruvian President Ollanta Humala and the former first lady, and the matter is expected to go to trial in 2021.⁴⁰

³⁴ CC 311.0 Swiss Criminal Code of 21 December 1937 (Status as of 1 July 2020), Article 158 No 1 para. 3 in conjunction with Article 25.

³⁵ The Swiss OAG has provided the Argentinean authorities with mutual legal assistance in connection with this case.

³⁶ Deluca was also indicted by U.S. prosecutors, but he was not successfully extradited to the United States to face charges. See Hugh Bronstein, *Argentine Judge Denies U.S. Extradition Request for Soccer Figures* (Oct. 18, 2016), <https://www.reuters.com/article/us-soccer-fifa-argentina/argentine-judge-denies-u-s-extradition-request-for-soccer-figures-idUSKCN12I2MF>.

³⁷ U.S. Department of Justice Press Release: Former Brazilian Soccer Official Sentenced to Four Years' Imprisonment for Racketeering and Corruption Offenses (Aug. 22, 2018), <https://www.justice.gov/usao-edny/pr/former-brazilian-soccer-official-sentenced-four-years-imprisonment-racketeering-and>; U.S. Department of Justice Press Release: Former FIFA Executive, President of CONMEBOL and Paraguayan Soccer Official Sentenced to Nine Years in Prison for Racketeering and Corruption Offenses (Aug. 29, 2018), <https://www.justice.gov/usao-edny/pr/former-fifa-executive-president-conmebol-and-paraguayan-soccer-official-sentenced-nine>.

³⁸ CONMEBOL Press Release, CONMEBOL recuperó USD 55 millones de la corrupción y ahora va por más (Nov. 1, 2020), <https://www.conmebol.com/es/conmebol-recupero-usd-55-millones-de-la-corrupcion-y-ahora-va-por-mas>.

³⁹ Reuters Staff, *Colombia Regulator Fines Odebrecht, Consortium Members \$84.5 Million*, REUTERS (Dec. 28, 2020), <https://www.reuters.com/article/odebrecht-colombia-idUKL1N2J81G9?edition-redirect=uk>.

⁴⁰ Anthony Lin, *The Biggest Trials Coming to Courts Around the World in 2021*, BLOOMBERG (Dec. 16, 2020), <https://www.bloomberg.com/news/articles/2020-12-17/the-biggest-trials-coming-to-courts-around-the-world-in-2021>.

D. Central America

Central American efforts to combat corruption have showed signs of stalling. Backlash from political and economic elites facing investigations resulted in closures of two important international anti-corruption initiatives. In late 2019, Guatemalan President Jimmy Morales closed the UN-supported International Commission Against Impunity in Guatemala after investigators began examining alleged criminal acts of President Morales.⁴¹ Similarly, in early 2020, Honduran President Juan Orlando Hernández elected not to renew the mandate of the Organization of American States–backed Mission to Support the Fight Against Corruption and Impunity in Honduras after his brother was convicted in the United States on drug trafficking charges.⁴²

IV. CONCLUSION AND PREDICTIONS FOR 2021

As we look ahead to 2021, we anticipate that the unique pressures created by the COVID-19 pandemic may result in additional high-profile government corruption investigations, particularly regarding companies in industries that have come under significant economic pressure during the crisis (e.g., healthcare). Initial indications are that the incoming Biden administration will accelerate government enforcement, and that the U.S. DOJ and SEC will continue to make FCPA enforcement a priority, with a focus on Latin America. Consistent with trends over the past few years, we expect to continue to see large cross-border investigations featuring collaboration between various international law enforcement agencies, and a sustained focus on high-dollar resolutions.

⁴¹ Arturo Conde, *U.S. Will Lose Out as Guatemala Shuts Anti-Corruption Commission, Experts Say*, NBC NEWS (Aug. 30, 2019), <https://www.nbcnews.com/news/latino/u-s-will-lose-out-guatemala-shuts-anti-corruption-commission-n1047786>.

⁴² Gustavo Palencia, REUTERS (Jan. 17, 2020, <https://www.reuters.com/article/us-honduras-corruption/honduras-ends-mandate-for-anti-corruption-body-idUSKBN1ZH014>).