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White Collar Attys Brace For More Latin America FCPA Action

By **Phillip Bantz**

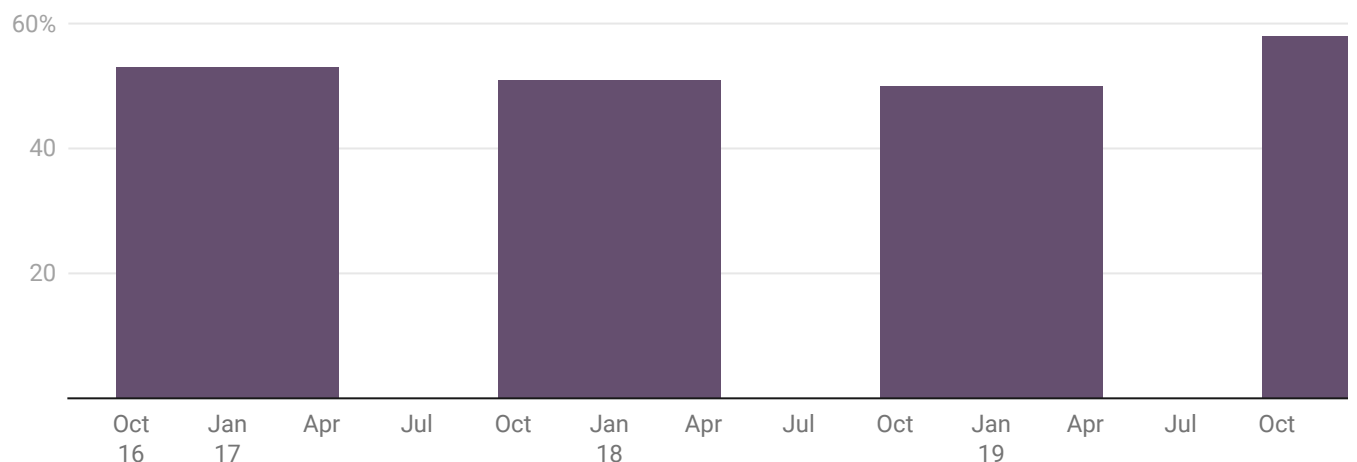
Law360 (February 8, 2023, 11:53 AM EST) -- Foreign Corrupt Practices Act enforcement in Latin America is forecast to remain hot as U.S. regulators strengthen partnerships with their counterparts in certain parts of the region amid the Biden administration's continued focus on tamping down international corruption.

Of the two dozen FCPA enforcement actions that the U.S. Department of Justice handled last year, 14 of the cases, or nearly 60%, involved Latin America, according to a list of cases compiled by the DOJ. In 2021, when the Biden administration announced a crackdown on corruption in the region, about 65% of the DOJ's FCPA cases had Latin America connections, up slightly from 58% in 2020, but a more significant increase from about 50% throughout 2017, 2018 and 2019.

The pace of FCPA enforcement doesn't appear to be slowing in 2023, which kicked off with federal prosecutors announcing that a grand jury in Miami **indicted** a sitting Venezuelan Supreme Court justice accused of accepting about \$10 million in bribes.

More Than Half of Recent FCPA Cases Involve Latin America

The region is expected to continue to be a hotbed of FCPA enforcement activity as the Biden administration has vowed to fight corruption in Latin America.



"You're going to see a steady flow of cases, both individual prosecutions as well as corporate resolutions, emanating from conduct associated with Latin America," said former Justice Department FCPA unit chief Christopher Cestaro, a Washington, D.C.-based partner at Wilmer Cutler Pickering Hale & Dorr LLP.

"The DOJ and SEC are not targeting Latin America as a place where they want to develop cases specifically," he added. "They're following the leads and evidence they receive — and it happens to

be that the evidence and leads are leading them to cases that involve Latin America."

Relationships that U.S. prosecutors have built over years with their counterparts in some Latin American countries, especially Brazil, have helped drive FCPA enforcement in the region. The COVID-19 pandemic strengthened those partnerships by opening new lines of communication, according to Frank Schall in the white collar, regulatory defense and investigations practice at Moore & Van Allen PLLC in Charlotte, North Carolina.

"The pandemic hit and made the world a little bit smaller," Schall said. "We've seen countries and organizations get more comfortable communicating electronically using Zoom or Teams or other video platforms as opposed to flying back and forth to have conversations on investigations."

In light of increased cross-border cooperation and the DOJ's recently updated corporate criminal enforcement policies, which **encourage self-reporting** misconduct, companies should assume that if regulators in Brazil, for instance, are aware of wrongdoing, so too are state-side regulators.

"The probability of information being shared across borders has gone up," Schall said. "This changes the calculus when it comes to disclosure and the time a company might have to make a disclosure or perform an initial investigation to understand whether it's something they need to disclose. The timetable has gotten significantly faster."

Ex-federal prosecutor Luke Cass, a partner at Womble Bond Dickinson LLP in Washington, D.C., noted that general corruption levels throughout Latin America remain "broadly high," and advised companies operating in the region to be "especially vigilant."

"Risk assessments, employee training, third-party compliance and reporting are all essential components of any compliance program," he said. "Particular caution should be exercised in due diligence and dealings with third-party contractors and vendors."

Last year, many governments in Latin America shifted the focus from anti-corruption efforts to more pressing issues, such as economic woes tied to inflation, which Russia's war in Ukraine has exacerbated, according to the 2022 Capacity to Combat Corruption Index.

The CCC Index, which evaluates and ranks countries based on 14 variables, such as the level of resources they have for fighting white collar crime and the independence of their judicial systems, found that Venezuela poses the highest risk for corruption.

Jon Sale, Miami-based co-chair of Nelson Mullins Riley & Scarborough LLP's white collar practice group, represents clients in Venezuela-related FCPA cases. He said the Venezuelan government doesn't tend to cooperate with the U.S. on anti-corruption efforts, and he doesn't expect the relationship will improve in the near future.

"I can't see any cooperation as long as the Southern District of New York wants to put Maduro in prison for the rest of his life," Sale added, referring to the DOJ's ongoing narco-terrorism and corruption case against Venezuela's President Nicolás Maduro.

According to the CCC Index, anti-corruption efforts remained stable last year in many Latin American countries, including those that had recent elections, such as Chile, Peru and Ecuador, which was connected to at least five FCPA investigations in 2022. One of the most high-profile probes centers on energy trading giant Vitol Group, which is accused of paying bribes to officials in Brazil, Ecuador and Mexico.

In Brazil, which ranked 10th out of 15 Latin American countries on the CCC Index, a new administration under president Luiz Inácio Lula da Silva is expected to ramp up the country's fight against corruption, continue working with the U.S. and "get much more efficient when it comes to issuing guidance on compliance and having similar expectations as the U.S.," according to Schall.

"With Lula, we're going to see more structure, possibly more funding, and more organization when it comes to anti-corruption," he said.

John Davis, who leads the FCPA and international anti-corruption practice at Miller & Chevalier Chtd.

in Washington, D.C., added, "Companies can anticipate that, under Lula, the cooperation will continue and that's going to keep spitting cases out and driving investigations."

If Brazil continues to bolster its corruption-fighting capabilities, FCPA probes in the country, which have traditionally centered on the energy industry, will reach into an array of sectors, Schall predicted.

"To the extent that other countries are also cooperating in cross-border investigations as much as Brazil is, we're going to see investigations become more general," he added. "It's an opportunity to branch out into any industry."

Aside from mining and energy, FCPA enforcement in Latin America will focus generally on industries of strategic importance to U.S. national security, such as manufacturing and technology, along with sectors that are vulnerable to large-scale corruption, including infrastructure and waste management.

That's according to Geert Aalbers, the São Paulo-based global chief strategy officer at Control Risks, a global consulting firm that helped put together the CCC Index.

"As the pandemic dissipates and inflation comes under control, corruption will return to the top of the political agenda," Aalbers said. "Going forward, anti-corruption candidates — and incumbents that preside over effective anti-corruption efforts — will be well-placed to win at the polls."

He added, "This, in turn, presages continued collaboration with the DOJ and SEC given their recent, proven track record in successfully leading on high-profile corruption investigations in the region."

--Editing by Alyssa Miller.