

Increase in Enforcement of US Foreign Corrupt Practices Act Makes Companies With Ties to Latin America More Vulnerable

By Amy Guthrie

April 18, 2023

U.S. authorities have been beefing up their enforcement capacity for violators of the Foreign Corrupt Practices Act (FCPA), which means that companies with ties to Latin America need to reinforce their compliance mechanisms, lawyers say.

Nearly 60% of the U.S. Department of Justice's FCPA enforcement actions and more than two-thirds of FCPA-related prosecutions of individuals during 2022 had connections to Latin America, according to data compiled by the Stanford Law School Foreign Corrupt Practices Act Clearinghouse.

Danny Dominguez, co-chair of the litigation and trial department in the Washington, D.C., office of Latham & Watkins, said the heightened FCPA scrutiny is a priority of the Biden administration.

"They view kleptocracy and corruption as one of the major forces that undermine the rule of law in the region," said Dominguez, noting that endemic corruption helps fuel the drug trade and migration, making corruption in Latin America a national security issue for the U.S.

At the same time, Latin America is gaining commercial prominence as companies reorganize supply chains to locate production closer to U.S. consumers.



Credit: BravissimoS/Shutterstock

This near-shoring trend, as well as the region's ability to provide crucial minerals and other natural resources coveted by U.S. entities, creates more potential touch points for compliance missteps, according to Katherine Sawyer, a counsel in Latham's D.C. office.

"In a period that's been sort of complicated by global tensions, in terms of Russia and China, Latin America is really kind of filling a void increasingly in a way that we haven't maybe seen in the past," said Sawyer.

Both Dominguez and Sawyer started their careers at Latham before tours in the U.S. government. Dominguez returned to Latham in 2014 after serving as associate counsel to President Barack Obama, while Sawyer rejoined in 2019 after working as an assistant U.S. attorney.

They are also both members of Latham's white-collar defense and investigations, and Latin America, practices. The vast majority of the compliance matters that Dominguez and Sawyer handle have a Latin America component.

Compliance Hotspot

The region's frequent appearance in FCPA investigations owes to a host of factors, including strong trade links with the U.S. and the corruption that plagues much of Latin America.

Latin America's largest economy, Brazil, scored 38 on a scale of 0-100 in Transparency International's 2022 Corruption Perceptions Index, in which a lower number indicates more corruption.

That put the South American giant just a few points above Ukraine and Mexico, Latin America's second-biggest economy, but well below the country seen as having the cleanest business culture, Denmark, which scored 90.

The Transparency International index tracks perceptions of corruption in 180 countries.

Compliance missteps in Brazil often garner attention in the U.S. after crackdowns by local authorities, who then cooperate with their U.S. peers to magnify the impact of the Brazilian investigations.

"Brazilian companies, especially those subject to U.S. jurisdiction, pay close attention to U.S. regulatory efforts," said Adriana Dantas, head of the compliance, investigations, and white-collar practice at Lefosse, a top Brazilian firm.

In 2022, FCPA enforcement actions involved conduct in 12 Latin American countries, according to Latham.

Notable penalties last year include a \$1.1 billion sanction against Glencore International, the Swiss commodity trading and mining company, for allegedly paying \$100,000 in bribes through intermediaries to government officials in countries such as Brazil and Venezuela.

While these big investigations garner a lot of attention, large Global 200 firms spend significant time trying to keep clients out of such costly and problematic investigations.

This means advising clients on due diligence and internal policies.

Sawyer said clients need to think of compliance as a constant, rather than a static, priority that shifts to keep pace with the evolution of a business.

"You can't address the risk that you can't see," said Sawyer, who advises clients to refresh risk evaluations as their businesses change and empower compliance officials within the company with a seat at the table next to operations.

As the ones kicking the tires pre- and post-transaction for M&A deals, Dominguez and Sawyer said they often find themselves the bearers of bad news and askers of tough questions.

This role is amplified if a client becomes the target of an investigation.

"When we are helping our clients defuse a crisis, we develop incredibly strong bonds with them," Dominguez said. "We are a true and trusted partner. But they never want to see us again."