

Colombia



DRT COLOMBIA

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2020 COMPLIANCE DEVELOPMENTS IN COLOMBIA

DRT Colombia is well-known for its white collar, compliance, and corporate practices. Our team of bilingual attorneys certified in anti-money laundering and qualified in Colombia and the U.S. represents individuals and corporations in matters involving criminal law, fraud, corruption, money laundering laws, and economic sanctions. We also represent clients from various industries in capitalizations, entity selection and formation, operating and partnership agreements, securities, contracts and governance matters. The Firm also conducts internal investigations and assessments for clients with concerns that their business practices or certain specific transactions may violate international, U.S. and Colombian legal standards, regulations, and best practices. The Firm identifies, isolates, and corrects the questionable transactions and practices; and further develops enhanced corporate governance programs to avoid repeat violations. Our Firm stands out among the rest because it brings to its practice legal experience in the U.S. and Colombia. The Firm also provides access to an international network of attorneys, experts, and private investigators, including a team of former U.S. prosecutors and government agents, and Board-Certified lawyers in international, criminal, and immigration law. With the support of its global network of experts, the Firm is also ready to navigate the rules and dynamics of highly specialized industries and disciplines. Further, the Firm is knowledgeable in handling complex and multi-jurisdictional proceedings, including non-criminal parallel law enforcement actions.

Against this backdrop, the 2020 was a very busy year for our law firm, especially since the legal departments of our corporate clients were required to face the unprecedented challenges posed by COVID-19. Additionally, the Colombian Government released new compliance guidance to enhance its efforts against corruption and money laundering.

ADDITIONAL COMPLIANCE RISKS

With the Colombian Government allocating significant resources via expedited public procurement processes, the risk of corruption dramatically increased in Colombia. Critically, as pressures grew on sales representatives, consultants, and distributors to keep businesses afloat, individuals received additional incentives to bribe government officials. Not surprisingly, in 2020 Colombian law enforcement agencies launched a number of Government investigations targeting companies for participating in the misappropriation of emergency COVID-19 funds, collusion, opaque contracts, and overpricing, as well as for engaging in the fraudulent purchase of ventilators, masks and other medical supplies.

Moreover, this year companies in Colombia were besieged by criminals impersonating government

agencies, international organizations, and healthcare facilities to solicit donations, steal personal information, or distribute malware (imposter scams); fraudsters misrepresenting that the products or services of publicly traded companies can prevent, detect, or cure the coronavirus (investment scams); companies selling unapproved or misbranded products that make false claims pertaining to COVID-19 or fraudulently marketing COVID-19-related supplies (product scams); individuals and entities stockpiling items in high demand to sell them at extremely high prices online and in person (price gouging); and insiders conducting transactions based on, or tipping others with, material non-public information about the negative impacts of COVID-19 on the financial performance of shares (insider trading).

Additionally, the Colombian Government alerted companies and financial institutions in the country that criminal organizations stepped up recruitment, sometimes under the pretext of legitimate employment, to receive deposits of illegal money into personal bank accounts; as well as an increase in illicit financial flows, including trade misinvoicing, tax evasion and the criminal smuggling of cash, gold, diamonds, and illicit goods across borders.

Companies in Colombia had to face these additional challenges in a remote working environment replete with financial strains, and massive surges in alerts caused by changes in the behavior of clients, employees, and third parties.

NEW COMPLIANCE GUIDANCE

In October, 2020, Transparency International (“T.I.”) released its report “Exporting Corruption” assessing the enforcement of the Organisation for Economic Co-operation and Development (“OECD”) Anti-Bribery Convention in the member countries of the OECD, including Colombia. While T.I. acknowledged that Colombia improved from little or no enforcement to limited enforcement against foreign bribery, T.I. made a number of recommendations to Colombia, including (i) improve collection and availability of aggregated data on investigations and cases of foreign bribery, (ii) ensure timely access to court decisions, (iii) enact legislation that provides protection to whistleblowers, (iv) increase public discussion on the relevance of a law on criminal liability of legal persons, (v) improve cooperation between law enforcement agencies and increase resources available to them, (vi) and provide greater clarity on the criteria used by prosecutors to not pursuing criminal charges in cases involving transnational bribery.

In response to the recommendations of I.T., the Colombian Government immediately released additional guidance that will likely require organizations operating in the country to update their compliance programs. Critically, On October 2, 2020, the Superintendency of Corporations issued Resolution No. 100.006261 expanding the number of companies that are required to design and effectively implement anti-corruption compliance programs. Pursuant to this resolution – which will become effective on January 1st, 2020 –, companies under surveillance by the Superintendency of Corporations that engaged in international business transactions exceeding 100 monthly minimum wages (“MMW”) (USD \$25,000, approximately) over the course of the previous year, as well as with income and/or assets exceeding 40.000 MMW (USD \$10,000,000), are now required to have an anti-corruption compliance program in place. Before the October 2, 2020 Resolution of the Superintendency of Corporations, only certain companies in the economic sectors of pharmaceuticals,

infrastructure and construction, manufacturing, mining, and IT were required to implement such compliance programs.

Earlier this year, in September 2, 2020, the Superintendency in Corporations had also released its advisory No. 27 amending its rules for the assessment of the anti-money laundering (“AML”) compliance programs that certain companies must have in place (“SARLAFT,” as these are known in Colombia). The new rules require companies to conduct AML due diligence efforts not only on their clients but also on their suppliers, shareholders, and employees. Further, the Superintendency of Corporations issued this Advisory No. 27 to authorize companies to leverage digital identity systems under the on point guidance issued by the Financial Action Task Force (FATF) on March 6, 2020. In it, the FATF explains several factors for assessing whether a digital identity system is sufficiently reliable and independent to conduct customer due diligence.

Lastly, on October 16, 2020, the Colombian Ministry of Justice and Law also issued the Government Decree No. 1358 authorizing the Colombian Agency of the Defense of the Government to record civil, criminal, and/or administrative decisions declaring the participation of companies and/or their senior officials in transnational corruption, in the public records of Colombia.

CONCLUSION

Given the additional risks caused by COVID-19, as well as the new compliance guidance released by the Colombian Government, organizations in this country should also update their risk profile to determine where vulnerabilities exist and enhance their controls, including customer and third-party due diligence procedures, around those vulnerabilities. Organizations in Colombia should make the best of technological resources to provide employees, customers, and third parties with training programs, together with mentoring and capacity building support, so all stakeholders are familiar with the red flags of fraud, corruption, and money laundering, and can take timely and appropriate remedial action.

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