

# USA Miami

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**DIAZ REUS INTERNATIONAL LAW FIRM & ALLIANCE (DRT)**  
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DRT Miami has earned recognition for its work in representing clients in white-collar cases, including cases involving the Foreign Corrupt Practices Act (“FCPA”), the Money Laundering Control Act (“MLCA”), the Global Magnitsky Act (“GLOMAG”), and the Sanctions and regulations of the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”). Over the years, our team of bilingual attorneys certified in international law, former prosecutors and law enforcement agents, and anti-money laundering specialists has successfully represented U.S. and non-U.S. citizens in obtaining pre-indictment resolution of Florida, U.S., and transnational parallel proceedings conducted by the U.S. Attorney’s Office in Miami, the Department of Justice (“DOJ”), and the various U.S. law enforcement agencies.

Not surprisingly, 2020 was a very active year for our law firm. Throughout this year, the U.S. Government actively investigated and prosecuted individuals and corporations suspected of being involved in political corruption or bribery in a foreign country under the FCPA and the MLCA. In addition, the U.S. implemented further aggressive measures to fight corruption, including economic sanctions administered by OFAC. And, U.S. anti-corruption agencies released new guidance to further clarify what the U.S. expects from companies with respect to corporate compliance.

## **2020 FCPA ENFORCEMENT**

The FCPA’s anti-bribery provisions prohibit U.S. persons and businesses, U.S. and foreign public companies listed on stock exchanges in the U.S. or that are required to file periodic reports with the SEC, and certain foreign persons and businesses acting while in the territory of the U.S., from making corrupt payments to foreign officials to obtain or retain business. Two different U.S. bodies enforce the FCPA: the DOJ and the Securities Exchange Commission (“SEC”). And, the DOJ frequently bolsters FCPA criminal charges against individuals and companies with charges under the MLCA. These additional money laundering charges enable DOJ to prosecute not only the briber, but also the foreign official receiving the bribe.

In 2020, the DOJ criminally charged multiple individuals and corporations for FCPA violations in connection with the bribery of foreign officials in or from countries such as Barbados, Brazil, China, India, Indonesia, Malaysia, Panama, Poland, Russia, Uganda, Uruguay, Venezuela, and Vietnam. As in past years, the DOJ focused on corruption in the energy industry. However, it also prosecuted actors from other industries such as banking, telecommunications, technology, travel and entertainment, and medical devices.

Over the course of this year, DRT Miami represented clients in highly publicized FCPA investigations such as the cases of Mediapro (Spain), PDVSA and CORPOELEC (Venezuela), Sargeant Marine Inc. (Brazil, Venezuela, and Ecuador), and Goldman Sachs (Malaysia).

## NEW FCPA-RELATED GUIDANCE

In 2020, the U.S. Government also released the following guidance to enhance its FCPA-related enforcement efforts globally:

- On June 1, 2020, the DOJ published its Guidance on Evaluation of Corporate Compliance Programs updating the guidance initially issued in February, 2017 and subsequently revised in April, 2019. This new guidance explains the assessments that DOJ makes in criminal cases about the design and implementation of corporate compliance programs by presenting considerations on 12 topic areas, which are grouped to track three core questions about the effectiveness of a compliance program: whether a corporation's compliance program is "well designed," whether the program is "adequately resourced and empowered to function effectively," and whether the program "works in practice."
- On July 3, 2020, the DOJ and the SEC released a new edition of their FCPA Resource Guide. This was the first update to the prosecutorial guidelines in FCPA matters since the original resource guide was published in November, 2012. It accounts for eight years of legal developments, including case law on the definition of the term "foreign official" under the FCPA, the jurisdictional reach of the FCPA, and the affirmative defense of foreign written laws. The resource guide also addresses legal standards such as the mens rea requirement in FCPA violations, the statute of limitations for criminal violations of the accounting provisions, and successor liability principles in mergers and acquisitions.
- On September 23, 2020, the SEC announced the adoption of its final rule on several aspects of the whistleblower program. This new rule - which became effective on October 23, 2020 - (i) changes the standards for calculating whistleblower award amounts; (ii) provides whistleblower awards for additional forms of dispute resolution (deferred prosecution agreements, non-prosecution agreements, and settlement agreements not linked to a judicial or administrative proceeding); (iii) prohibits a whistleblower from obtaining multiple recoveries through other whistleblower programs; (iv) limits whistleblower awards to individuals who, among other requirements, submit information that is not generally known or available to the public; (v) provides that under certain circumstances an applicant can be permanently barred from seeking an award; (vi) and includes a summary disposition procedure for certain categories of common denials.

## OFAC SANCTIONS TARGETING CORRUPTION

In 2020, the U.S. Government continued utilizing economic sanctions to fight corruption in Cuba, Nicaragua, Venezuela and other countries that are believed to be under corrupt regimes. For example, on September 23, 2020, OFAC amended the Cuban Assets Control Regulations to further implement President Trump's foreign policy of denying the Cuban regime sources of revenue. This amendment restricted lodging at certain properties in Cuba; importing Cuban-origin alcohol and tobacco products; attending or organizing professional meetings or conferences in Cuba; and participating in and organizing certain public performances, clinics, workshops, competitions, and exhibitions in Cuba.

Over the course of this year, OFAC also sanctioned several individuals, entities, and vessels for operating in designated sectors of the Venezuelan economy, or for their attempts to evade U.S. sanctions related to Venezuela. And, OFAC sanctioned a number of individuals and companies under the Global Magnitsky Sanctions (“GLOMAG”), including nationals from Cambodia, China, Iraq, Libya, Mexico, Morocco, South Africa, Turkey, Uganda, and United Kingdom for their alleged involvement in corruption issues. Pursuant to GLOMAG, OFAC may sanction foreign persons and entities believed to be involved in serious human rights abuses or corruption in any foreign country, as well as those who assist or provide material support, including goods and services, to the designated persons or the targeted activities.

Sanctioned individuals and entities are added to OFAC’s List of Specially Designated Nationals and Blocked Persons (“SDN List”), and all of their property and interests in property, within or transiting U.S. jurisdiction or in the possession or control of U.S. persons, are categorically blocked and must be reported to OFAC. Additionally, unless authorized by a general or specific license issued by OFAC, U.S. persons or foreigners conducting business in U.S. territory, with U.S. persons, or using U.S. goods or services are prohibited from engaging in transactions with the sanctioned entities and individuals, as well as with entities in which the sanctioned parties have, directly or indirectly, 50% or greater ownership interest. Individuals and entities found to be in violation of OFAC sanctions, whether U.S. or foreign, will be exposed to significant civil and criminal penalties, and may themselves be added to OFAC’s SDN list through the enforcement of secondary sanctions

In 2020, DRT Miami successfully represented a number of clients in OFAC matters. For instance, our team represented a Honduran politician and businessman sanctioned by OFAC for allegations of corruption and money laundering, and secured his removal and the removal of his companies from the SDNT List. DRT also represented a Venezuelan company that provides engineering and maintenance services to PDVSA in obtaining written guidance from OFAC that confirmed PDVSA’s authority to pay DRT’s client over one million dollars; as well as a major Chinese import-export enterprise in obtaining written clarification from OFAC, with a commitment that OFAC will work with banks to ensure that future transactions by the client will be processed through the U.S. banking system without blocking.

## **CONCLUSION**

In 2020, the U.S. continued to actively fight corruption around the world through criminal and civil penalties, and economic sanctions against individuals and companies believed to be involved in such activities. In addition, a number of U.S. agencies released additional guidance that will likely require organizations subject to U.S. jurisdiction or that conduct business in or with the U.S., U.S. persons, or using U.S.-origin goods or services, to update their corporate compliance programs.