



DRT Miami Year in Review: 2021 Anti-Corruption and Crypto-Related Enforcements

By Michael Diaz, Jr., Global Managing Partner, Diaz Reus International Law Firm & Alliance (DRT)

With South Florida a major center for high-profile Government investigations, and Miami the pivot point between the Americas and Europe, our firm has earned recognition for its work in representing clients in 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 Sanctions 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. Our team is also experienced in representing clients in business transactions, corporate governance, and entity formation, particularly, in securing the client’s compliance with U.S. laws and regulations targeting money laundering, corruption, securities fraud, violation of economic sanctions, and other criminal activity.

Not surprisingly, 2021 was a very active year for our law firm. For example, throughout this year, the Government implemented additional measures in the U.S. fight against corruption, which has been declared by the Biden-Harris administration “a core U.S. national security interest.” In addition, the U.S. Government heightened its efforts to penalize violations of U.S. laws and regulations in the virtual currency industry.

ANTI-CORRUPTION ENFORCEMENT

On July 28, 2021 President Biden released his National Security Memorandum declaring a national priority to modernize intelligence collection, streamline enforcement methods, and build stronger international partnerships to fight global corruption. Although the DOJ and Securities Exchange Commission (“SEC”) are the primary enforcers of U.S. anti-corruption statutes, the Presidents memorandum called on thirteen additional government agencies to aggressively investigate and prosecute international corruption and money laundering.

As a result, over the past year the U.S. Government implemented additional efforts to actively prosecuting corruption through criminal and civil penalties. For instance, the U.S. developed new initiatives to investigate money laundering and other criminal activity in Central America, including the United States-Northern Triangle Enhanced Engagement Act, Homeland Security’s Operation Sentinel, and the creation of special task forces to increase prosecutions and asset recoveries relating to criminal activity in Mexico and the countries of the Northern Triangle.

The Department of Justice also criminally charged individuals and corporations for FCPA violations in connection with the bribery of foreign officials in or from countries such as Brazil, Venezuela, and Colombia.

DRT Miami Year in Review

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.

Additionally, the U.S. Office of Foreign Assets Control has sanctioned several individuals and entities under the Global Magnitsky Sanctions ("GLOMAG"), including nationals from Guatemala, Nicaragua, El Salvador, China, Russia, and the Democratic Republic of Congo. 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 (the "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.

This trend of anti-corruption enforcement is expected to continue. On December 6, 2021, President Biden released his "United States Strategy on Countering Corruption" further declaring that the Government is working "domestically and internationally, with governmental and nongovernmental partners, to prevent, limit, and respond to corruption and related crimes." This policy statement outlines five pillars of work for the U.S. Government, which include modernizing efforts to fight corruption, enacting gap-filling legislation to curb illicit finance, increasing federal and state enforcement actions, and leveraging foreign assistance to achieve anti-corruption policy goals.

Over the course of 2021, DRT Miami represented clients in highly publicized FCPA cases such as the case of Edoardo Orsoni, former general counsel of CITGO Petroleum Co. in Houston, Texas, and Petroleos de Venezuela ("PDVSA") in Venezuela. Mr. Orsoni was facing conspiracy, money laundering and FCPA corruption charges, and unlike other former officials at PDVSA and Citgo investigated by the U.S. Government, who all have received and are serving federal prison sentences, in April 2021 Mr. Orsoni was sentenced to probation only, short of avoiding criminal prosecution altogether.

CRYPTO-RELATED ENFORCEMENT

Throughout 2021, the U.S. Government used economic sanctions to target potential criminal activity in the virtual currency space. For example, in September, OFAC added the Russian virtual currency exchange SUEX OTC, S.R.O to the SDN List for facilitating financial transactions with ransomware actors. This marked OFAC's first-ever designation of a virtual currency exchange on the SDN List and coincided with the U.S. government's efforts to counter ransomware attacks, which have increased in scale, sophistication, and frequency during the Covid-19 pandemic.

Moreover, OFAC issued its "Sanctions Compliance Guidance for Virtual Currency" (the "Guidance"). The purpose of this Guidance is to promote understanding of, and compliance with, sanctions requirements and due diligence processes by actors in the virtual currency industry. The Guidance confirms that "sanctions compliance obligations apply equally to transactions involving virtual currencies and those involving traditional fiat currencies," and points out that failure to comply with OFAC Sanctions may lead to substantial civil and/or criminal penalties depending on the nature of the violation.

In addition to OFAC enforcement, the DOJ in October announced the creation of its National Cryptocurrency Enforcement Team (NCET), a special task force that will coordinate investigation and enforcement efforts of various criminal violations involving digital assets. The DOJ has a wide variety of federal charges at its disposal to deal with the misuse of cryptocurrency, including wire fraud, mail fraud, securities fraud, and money laundering, among others.

DRT Miami Year in Review

DRT has extensive experience in counseling individuals and organizations, including technology companies, exchangers, administrators, miners, wallet providers, in their efforts to secure compliance with U.S. laws. Our work this year included transaction screening, compliance assessments, design, and implementation of compliance programs, or requesting U.S. agency's interpretive guidance or specific licenses if needed.

CONCLUSION

In 2021, the U.S. Government 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, Government agencies increased their focus on the virtual currency industry, likely requiring 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.