

Clients & Friends Memo

DOJ Casts the FCPA Spotlight on Brazil-Related Enforcement

June 11, 2021

On May 25, 2021, the U.S. Department of Justice (“DOJ”) unsealed an [indictment](#) charging two Austrian citizens, Peter Weinzierl (“Weinzierl”) and Alexander Waldstein (“Waldstein”), for their roles in a scheme to launder hundreds of millions of dollars through the U.S. financial system on behalf of the Brazilian construction conglomerate, Odebrecht S.A. (“Odebrecht”). The indictment alleges that Weinzierl and Waldstein helped Odebrecht funnel money to offshore accounts to pay bribes to government officials in Brazil, Panama, and Mexico. The [announcement](#) was timed to coincide with the arrest of Weinzierl in the United Kingdom; however, Waldstein remains at large.

This enforcement action is notable for a number of reasons:

- (1) DOJ has used U.S. money laundering statutes to charge Weinzierl and Waldstein with bribery-related misconduct because both individuals likely fall outside of the ambit of the Foreign Corrupt Practices Act (“FCPA”);
- (2) it heralds a widely anticipated uptick in anti-corruption and anti-money laundering enforcement demanded by the Biden administration;
- (3) it highlights continued focus on Latin America and Brazil in particular as a target of anti-corruption and anti-money laundering enforcement; and
- (4) Weinzierl’s arrest by the UK authorities at the request of their U.S. counterparts underlines ongoing close cooperation between the two jurisdictions.

EDNY Recently Unsealed the Weinzierl/Waldstein Indictment

The Eastern District of New York (“EDNY”) indictment charges Weinzierl and Waldstein, former bank executives and Austrian citizens, with several money laundering offenses. Weinzierl was the CEO of a private bank in Austria, for which Waldstein served as an officer. Both men were also directors at a second bank, based in Antigua and Barbuda. The indictment alleges that between 2006 and 2016 the two individuals laundered more than \$170 million held in New York bank accounts by Odebrecht. Acting in tandem with Odebrecht and other co-conspirators, Weinzierl and

Waldstein used the Austrian bank to funnel the money to Odebrecht's offshore accounts in Antigua. Odebrecht utilized that money to pay bribes to government officials in Brazil, Panama, and Mexico in order to obtain and retain business.

This indictment represents the latest criminal charges following the December 2016 global settlement with Odebrecht and its subsidiary, Braskem. In the 2016 plea agreements, the two companies admitted to paying hundreds of millions of dollars in bribes to foreign government officials since 2001. Odebrecht and Braskem pleaded guilty to violating the FCPA and agreed to pay around \$3.5 billion in penalties to U.S., Brazilian, and Swiss authorities although these fines were subsequently reduced due to Odebrecht's financial difficulties.

Use of AML Statutes to Target Foreign Corruption

The prosecution of Weinzierl and Waldstein serves as a reminder that the DOJ will use all prosecutorial tools in its toolbox to enforce overseas anti-corruption efforts, even where the underlying misconduct is beyond the FCPA's reach. Prosecutors in the Eastern District of New York and the DOJ Fraud Section used the money laundering statutes, 18 U.S.C. §§ 1956 and 1957, to charge Weinzierl and Waldstein with foreign bribery misconduct. According to the indictment, defendants were foreign bank executives, and they facilitated the flow of funds to offshore bank accounts for Odebrecht to use to pay bribes to government officials in Panama, Mexico, and Brazil.

The DOJ prosecutors chose not to pursue FCPA charges seemingly because Weinzierl and Waldstein are beyond the scope of the statute's class of defendants. As foreign bank executives, neither Weinzierl nor Waldstein are individuals covered by the FCPA, *i.e.*, U.S. citizens; officers, directors, employees, or agents of a U.S. company; or individuals who commit misconduct while in the United States. Therefore, DOJ charged defendants with money laundering offenses for what is principally conspiring to commit foreign bribery in violation of the FCPA.

Biden Administration Continues a Recent Trend and Prioritizes Anti-Corruption Enforcement

EDNY unsealed the Weinzierl and Waldstein indictment as the Biden administration fleshes out its anti-corruption agenda. The [Anti-Money Laundering Act of 2020](#) strengthens the government's authority to police financial markets by enacting a broad set of requirements for covered federal agencies and financial institutions. Moreover, a June 3, 2021 White House memo titled "[Establishing the Fight Against Corruption as a Core United States National Security Interest](#)" calls on numerous government agencies and offices to review and develop strategies to bolster anti-corruption efforts in the United States and abroad. The president's all-hands-on-deck initiative that requires cross-agency cooperation is not entirely new but it reinforces DOJ's efforts to counter corruption and create a level playing field for companies competing for business abroad. As the Biden administration settles in, one thing is clear: DOJ is sharpening its teeth and looking to target

individuals and companies engaged in foreign bribery and will use all available legislation to bring corporates and individuals to account.

Continued Focus on Brazil/LATAM

Brazil and Latin America continues to be a key focus of the U.S., UK, and other international enforcement authorities in pursuing individuals and corporates for corruption offenses. On June 7, 2021, the U.S. Attorney General, Merrick B. Garland, [announced](#) an initiative targeting corruption and human trafficking in Guatemala, El Salvador, and Honduras. The first half of 2021 has also seen enforcement activity relating to bribery schemes involving the state oil companies of [Ecuador](#) and [Venezuela](#).

The Weinzierl/Waldstein indictment is yet another example of international enforcement actions stemming from the “Car Wash” investigation (“*Lava Jato*”). The original Brazilian investigation into bribery of Petrobras officials dates back to March 2014 and has resulted in prison sentences for around 300 individuals and billions of dollars in fines and financial settlements with companies involved.

Odebrecht signed leniency agreements with the U.S., Brazilian, and Swiss authorities in [December 2016](#) and concluded its three-and-a-half-year DOJ-mandated monitorship in [November 2020](#). The arrest and indictment of Weinzierl shows that related enforcement actions against corporates and individuals are live and ongoing. As we highlighted in [November 2020](#) in our update on another Car Wash-related enforcement action, the truly global scope of the misconduct and investigation combined with the sheer volume of information obtained through cooperating witnesses means that international enforcement will likely continue for several more years.

As is aptly demonstrated by this case, the U.S. authorities have a close and collaborative relationship with their UK counterparts and regularly request legal assistance through both formal and informal channels.

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