

COLOMBIA

Limited enforcement

0.2% of global exports

Investigations and cases

In the period 2016-2019, Colombia opened 20 investigations, commenced two cases and concluded one case with sanctions.

In 2018, **Sociedad Interamericana de Aguas y Servicios (Inassa)**, a Colombian subsidiary of Spanish-owned water utility company **Canal Isabel II**, was ordered by the business regulator, the Superintendency of Corporations, to pay a fine of about US\$1.8 million for bribing two Ecuadorian officials to expedite payments in connection with government contracts.¹ The decision also required Inassa to publish an extract of the regulator's ruling "in a medium of wide circulation and in a visible part of its website".

The agricultural company, **Vram Holding**, is reportedly under investigation for how it obtained a US\$6 million contract to build a baseball stadium in Venezuela.² The company has already been sanctioned with a US\$50,000 fine for obstruction of justice.³ Another company, **AGM Desarrollos**, is, according to media reports, under investigation for the possible bribery of officials in El Salvador in exchange for public lighting services.⁴ In February 2020, the Colombian Prosecutor's Office opened an

investigation into **Avianca**, a commercial airline,⁵ after the airline reported to the US Securities and Exchange Commission in a 2019 filing that it may have committed foreign bribery by providing free and discounted airline tickets to government employees in several countries.⁶

Recent developments

Recently enacted legislation instituted a new sanction for legal persons convicted of foreign bribery, namely, debarment from participating in public procurement proceedings.⁷ Other provisions on conflicts of interest,⁸ and asset and interest declarations, were also signed into law.⁹

The Superintendency of Corporations has engaged in a variety of capacity-building exercises. In 2019, it held 32 training sessions on foreign bribery for private-sector entities. It has published handbooks, made online training courses available¹⁰ and produced a regulation providing guidance on Law 1,778/2016, implementing the OECD Anti-Bribery Convention into domestic legislation.¹¹

Transparency of enforcement information

There are no published separate statistics on foreign bribery-related investigations and cases. Information on mutual legal assistance requests sent and received is not available to the public.

There is no publicly accessible database for foreign bribery cases. The Superintendency of Corporations publishes its administrative decisions on corporate

¹ <https://www.supersociedades.gov.co/Noticias/Paginas/2018/supersociedades-impone-multa-de-5-078-millones-a-inassa-por-soborno-transnacional.aspx>; <https://www.bnamericas.com/en/news/inassa-fined-in-colombia-for-transnational-bribery>

² <https://colombiareports.com/colombia-investigating-12-companies-for-foreign-bribery-report/>

³ <http://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>

⁴ <https://www.laprensagrafica.com/elsalvador/San-Salvador-Apopa-y-Santa-Tecla-los-clientes-de-AGM-Desarrollos-20161011-0032.html>

⁵ <https://www.dw.com/es/fiscal%C3%ADa-de-colombia-allana-avianca-por-investigaci%C3%B3n-de-soborno/a-52358954>

⁶ <https://www.financecolombia.com/avianca-statement-we-may-have-violated-the-us-foreign-corrupt-practices-act/>

⁷ Law 2,014/2019 <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202014%20DEL%2030%20DE%20DICIEMBRE%20DE%202019.pdf>

⁸ Law 2,003/2019: 220

⁹ Law 2,013/2019: 220

¹⁰ https://www.supersociedades.gov.co/delegatura_aec/Paginas/Curso-virtual-sobre-Soborno-Transnacional.aspx

¹¹ https://www.supersociedades.gov.co/nuestra_entidad/normatividad/normatividad_resoluciones/Resoluci%C3%B3n%20200-000558.pdf; https://www.supersociedades.gov.co/delegatura_aec/Documents/Circular_Externa_100-000003_del_26_de_julio_de_2016.pdf; https://www.supersociedades.gov.co/delegatura_aec/Documents/RESOLUCION_BENEFICIOS_POR_COLABORACION.pdf

liability.¹² Court decisions are public and available online, but prompt access is limited due to the time it takes for sentences to be published and the difficulty of navigating court websites. There have to date been no court decisions in foreign bribery cases.

Beneficial ownership transparency

There is no central register of beneficial ownership information. Law 2,010/2019 provided for creation of a Unified Register of Effective, Final or Real Beneficial Owners, but there is no public information about its implementation. The public has access to the Unified Company Register,¹³ which has only basic information on legal persons. The Financial Action Task Force has noted that “while basic information of legal persons is updated annually and accessible in the public registries and supervisors’ databases, the authorities have difficulty obtaining accurate and up-to-date information on the beneficial ownership (BO) of complex corporate structures when there is foreign ownership or control involved”.¹⁴

Inadequacies in legal framework

Colombia has administrative liability for corporations. There is no provision for corporate criminal liability, which would offer better avenues for effective and dissuasive sanctions. The OECD WGB noted in its Phase 3 Report in 2019 that detection of foreign bribery is jeopardised by the continued absence of whistleblower protection legislation in Colombia and by the lack of visibility and accessibility of public channels for reporting foreign bribery.¹⁵ A positive note in this respect is the creation of a reporting channel within the Superintendency of Corporations.¹⁶

Inadequacies in enforcement system

Colombian authorities have yet to demonstrate efforts to enforce against foreign bribery-related money laundering, according to the OECD WGB’s

2019 report. Better guidance and more training are needed on identifying and reporting foreign bribery “to leverage the AML [anti-money laundering] regime for the detection of foreign bribery”.¹⁷

Although there are improvements in inter-agency cooperation between law enforcement authorities, this should be strengthened to ensure sustainability of efforts. In particular, the OECD WGB has recommended enhanced cooperation and coordination between the Superintendency of Corporations and the Prosecutor General’s Office. The limited resources allocated for the investigation of the complex circumstances of foreign bribery cases makes this cooperation even more important.

While the creation of a specialised unit for financial investigations in the Prosecutor’s Office was a positive step, foreign bribery may be connected to a host of other crimes under the jurisdiction of other prosecutors. This raises the need for specific training for all prosecutors, and awareness-raising efforts among law-enforcement agencies.

The discretion of the Prosecutor General to use the “principle of opportunity” in any investigation may represent a risk to the prosecution of foreign bribery cases.

Recommendations

- Improve collection and availability of aggregated data on investigations and cases of foreign bribery, including data on international cooperation
- Ensure timely access to court decisions
- Enact legislation which provides protection to whistleblowers in the public and private sectors
- Increase public discussion on the relevance of a law on criminal liability of legal persons
- Continue providing capacity building to prosecutors and judges related to complex cases that involve transnational bribery
- Continue improving training and technical capacities of accountants and auditors to prevent and detect transnational bribery cases
- Improve cooperation between law enforcement agencies and increase resources available to them
- Provide greater clarity on the criteria used by the

¹² https://www.supersociedades.gov.co/delegatura_aec/Paginas/Decisiones_en_firme.aspx

¹³ <https://www.rues.org.co/>

¹⁴ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-Mutual-Evaluation-Colombia-2018.pdf>

¹⁵ <http://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>

¹⁶ https://www.supersociedades.gov.co/delegatura_aec/Paginas/Canal-de-Denuncias-Soborno-Internacional.aspx

¹⁷ <http://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>

Prosecutor General to resort to the “principle of opportunity” in cases involving transnational bribery

- Continue promoting awareness of foreign bribery risks in the private sector.