

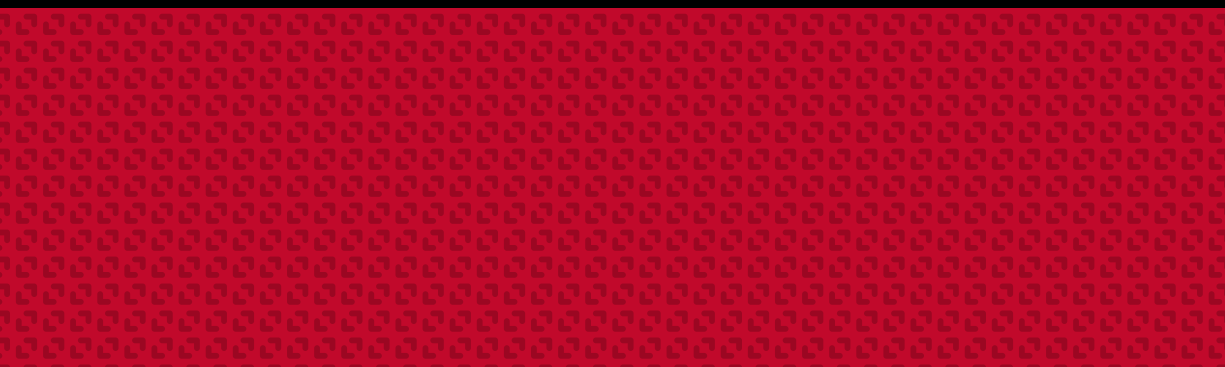


LATIN LAWYER

**THE GUIDE TO
CORPORATE
COMPLIANCE**

FOURTH EDITION

Editor
Andrew M Levine



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Publisher's Note

Latin Lawyer and LACCA are delighted to publish the fourth edition of *The Guide to Corporate Compliance*

Edited by Andrew M Levine, litigation partner at Debevoise & Plimpton LLP, this brings together the knowledge and experience of leading practitioners from a variety of disciplines and provides guidance that will benefit all those who must navigate the region's complex, fast-changing framework of rules and regulations. In particular, this latest edition offers a fresh focus on forensic accountancy, how a volatile political situation can push ESG to the top of the agenda and the compliance challenges involved with fintech – among other areas.

We are delighted to have worked with so many leading individuals to produce *The Guide to Corporate Compliance*. If you find it useful, you may also like the other books in the Latin Lawyer series, including *The Guide to Infrastructure and Energy Investment* and *The Guide to Corporate Crisis Management*, as well as our jurisdictional references and our tool providing overviews of regulators in Latin America.

My thanks to the editor for his vision and energy in pursuing this project and to my colleagues in production for achieving such a polished work.

CHAPTER 16

Recent Trends in Mitigating US Sanctions Risks in Latin America

Ryan Fayhee, Diego Durán de la Vega, Tyler Grove and Anna Hamati¹

It has been over a year since we published our initial chapter regarding how best to identify and mitigate US sanctions risk in Latin America. To supplement our 2022 publication, this chapter aims to provide an overview of recent trends in US sanctions and how Latin American companies can continue to mitigate such risks. We first provide a brief background of the relevant sanctions authorities, followed by an overview and analysis of trends in US sanctions regulatory developments and enforcement actions, then conclude with recommendations on how Latin American companies can mitigate those risks.

Sanctions background

Sanctions are a foreign policy tool that allow the US president, upon declaring a national emergency, to prohibit a wide range of transactions involving ‘property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States’.² ‘Person’ includes both natural persons and entities. The US Department of the Treasury’s Office of Foreign Assets Control (OFAC) is the primary agency responsible for administering and enforcing economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats

1 Ryan Fayhee, Diego Durán de la Vega and Tyler Grove are partners, and Anna Hamati is an associate at Hughes Hubbard & Reed LLP.

2 50 U.S.C. § 1702(a).

to the national security, foreign policy or economy of the United States. There are more than 35 US sanctions programmes administered by OFAC, while other departments, including the US Departments of State, Commerce, Homeland Security, and Justice, may also play an important role.

Sanctions may be comprehensive in nature, prohibiting commercial activity with an entire country, as in the case of Syria, Iran, Cuba, North Korea and certain Russian-occupied regions of Ukraine, or they may be more targeted, blocking certain transactions with specific entities, groups or individuals. OFAC imposes targeted sanctions by routinely adding and removing entries on its Specially Designated Nations (SDNs) and Blocked Persons List (SDN List), which contains more than 6,000 listings. All property and interests in property of SDNs that are in the United States or in the possession or control of US persons are blocked³ and all transactions by US persons or within (or transiting) the United States that involve any property or interests in property of designated or blocked persons are prohibited unless authorised by a general or specific licence issued by OFAC or exempt. Additionally, non-US persons can risk becoming sanctioned themselves for engaging in certain transactions with persons identified on OFAC's SDN List. As illustrated, sanctions are an expansive and flexible foreign policy tool that can be easily imposed or removed to achieve foreign policy objectives, evidencing their appeal to US policymakers.

Sanctions trends overview – regulatory developments in Latin America, Russia and other regions

In 2022, the US utilised sanctions in response to numerous geopolitical issues across the globe, reinforcing the use of sanctions as its preferred foreign policy tool, most notably in the case of Russia. Below, we summarise the US government's recent actions in Latin America, followed by recent actions in Russia and other regions.

3 See OFAC Frequently Asked Question 9, which defines blocking as, 'Another word for it is "freezing." It is simply a way of controlling targeted property. Title to the blocked property remains with the target, but the exercise of powers and privileges normally associated with ownership is prohibited without authorisation from OFAC. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with regard to the property.'

Nicaragua

On 24 October 2022, OFAC sanctioned the Nicaraguan mining authority General Directorate of Mines (DGM) and one official of the Government of Nicaragua, pursuant to Executive Order (EO) 13851.⁴ Additionally, President Biden signed a new EO that amends EO 13851 and expands the Treasury's authority to hold the Ortega-Murillo regime accountable for its continued attacks on Nicaraguans' freedom of expression and assembly. The new EO also gives the Treasury the authority to target certain persons that operate or have operated in the gold sector of the Nicaraguan economy, and any other sector identified by the Secretary of the Treasury in consultation with the Secretary of State. Furthermore, the new EO provides expanded sanctions authorities that could be used to prohibit new US investment in certain identified business sectors in Nicaragua, the importation of certain products of Nicaraguan origin into the United States, or the exportation, from the United States, or by a United States person, wherever located, of certain items to Nicaragua. The imposition of these sanctions and the US effort to expand its sanctions authorities with respect to Nicaragua signal that the US is prepared to impose further sanctions on Nicaragua if the country continues to act contrary to US foreign policy interests.

In conjunction with the announcement of the Nicaragua-related actions, the Under Secretary of the Treasury for Terrorism and Financial Intelligence, Brian Nelson, noted that, '[t]he Ortega-Murillo regime's continued attacks on democratic actors and members of civil society and unjust detention of political prisoners demonstrate that the regime feels it is not bound by the rule of law,' and '[w]ith President Biden's new Executive Order, we can and will use every tool at our disposal to deny the Ortega-Murillo regime the resources they need to continue to undermine democratic institutions in Nicaragua.' The US sanctions against Nicaragua, as well as the actions against Russia, exemplify the use of sanctions as a blunt force foreign policy tool to isolate persons acting contrary to US interests from financial markets and incentivise a change in behaviour.

Paraguay

On 26 January 2023, OFAC sanctioned Horacio Manuel Cartes Jara (Cartes), the former president of Paraguay, and Hugo Adalberto Velazquez Moreno (Velazquez), the current vice president, for, 'their involvement in the rampant

4 See Press Release, Treasury Sanctions Nicaragua Directorate of Mines and Government Official Responsible for Decades of Violence, Dep't. of the Tres. (24 October 2022).

corruption that undermines democratic institutions in Paraguay.⁵ OFAC also sanctioned Tabacos USA Inc, Bebidas USA Inc, Dominicana Acquisition SA, and Frigorifico Chajha SAE, for being owned or controlled by Cartes. OFAC designated these individuals and entities pursuant to EO 13818, which implements the Global Magnitsky Human Rights Accountability Act and targets perpetrators of serious human rights abuse and corruption around the world. Such actions by the US government also illustrate its continued preference for sanctions as a foreign policy tool and its willingness to use sanctions against heads of state to achieve foreign policy objectives.

Venezuela

The US also took sanctions-related actions against Venezuela in 2022. While OFAC's recent Russia, Nicaragua and Paraguay-related actions illustrate how the US government will impose sanctions when persons or countries engage in activity that is against the US's policy interests, recent Venezuela actions illustrate how OFAC is willing to lift sanctions when a person or entity exhibits an interest in engaging more meaningfully with US-supported interests or otherwise adjusts its behaviour. Specifically, on 26 November 2022, the US moderately eased its sanctions on Venezuela's oil sector by issuing Venezuela-related General License (GL) 41, which authorises Chevron Corporation to resume limited natural resource extraction operations in Venezuela, and Venezuela-related GL 8K, which extends the authorisation for US companies to engage in certain limited maintenance operations in Venezuela or involving Venezuela's national oil company, *Petróleos de Venezuela, SA*, until 26 May 2023.⁶ In the corresponding press release for these actions, OFAC noted that the two GLs were issued in response to:

- the Unitary Platform⁷ and the Maduro regime's 26 November 2022 announcement of the resumption of talks in Mexico City;
- a humanitarian agreement focused on education, health, food security, flood response, and electricity programmes that will benefit the Venezuelan people; and

5 See Press Release, Treasury Sanctions Paraguay's Former President and Current Vice President for Corruption, Dep't. of the Tres. (26 January 2023).

6 See Press Release, Treasury Issues Venezuela General License 41 Upon Resumption of Mexico City Talks, Dep't. of the Tres. (26 November 2023).

7 The Unitary Platform, or *Plataforma Unitaria*, is a Venezuelan opposition political alliance made up of civil society, trade unions, retired military personnel, political parties, and deputies of the 2016–2021 National Assembly.

an agreement on the continuation of talks focused on the 2024 elections. OFAC noted that the issuance of the two GLs ‘reflects longstanding US policy to provide targeted sanctions relief based on concrete steps that alleviate the suffering of the Venezuelan people and support the restoration of democracy.’⁸

Russia

In addition to the recent sanctions actions related to Latin America, the United States, along with a significant number of other countries, imposed an extraordinary set of economic and trade sanctions on Russia and Belarus in response to Russia’s invasion of Ukraine. The key Russia-related actions include the imposition of a comprehensive embargo on the so-called Donetsk People’s Republic and Luhansk People’s Republic of Ukraine,⁹ broad new prohibitions for US persons on making new investments in Russia¹⁰ or providing certain services to Russia (including accounting, trust and corporate formation, management consulting, and quantum computing services),¹¹ as well as a ban on the provision of services related to the maritime transportation of crude oil and petroleum products of Russian-origin (the Price Cap Policy).¹² The US also expanded its prohibitions against dealings in debt or equity of certain Russian entities, implemented bans on the exportation of US dollar banknotes and luxury goods, and banned the importation of Russian energy products, gold, fish, seafood, alcoholic beverages, and non-industrial diamonds to the United States.¹³

In addition to these actions, the United States added to the SDN List over 1,500 entities and persons operating in Russia, including Russia’s largest financial institutions (VTB Bank, Sberbank and Alfa-bank), Russian elites and supporters of its president, persons operating in Russia’s defence, industrial, financial, technology and manufacturing sectors, among others, key Russian government officials (including the Russian Duma and its members), and prominent Russian

8 See *id.*

9 See E.O. 14065 (21 February 2022).

10 See E.O. 14066 (8 March 2022), E.O. 14068 (15 March 2022), and E.O. 14071 (6 April 2022).

11 See Determination Pursuant to Section 1(a)(ii) of Executive Order 14071 (8 May 2022) and Determination Pursuant to Section 1(a)(ii) of Executive Order 14024 (15 September 2022).

12 See Determination Pursuant to Section 1(a)(ii), 1(b), and 5 of E.O. 14071 (3 February 2023), Determination Pursuant to Section 1(a)(ii) of E.O. 14071 (3 February 2023), and Guidance on Implementation of the Price Cap Policy for Crude Oil of Russian Federation Origin (3 February 2023).

13 See, e.g., Directive 1A, Prohibitions Related to Certain Sovereign Debt of the Russian Federation (22 February 2022) and Directive 3, Prohibitions Related to New Debt and Equity of Certain Russia-related Entities (24 February 2022).

businessmen (as well as their aircraft and yachts).¹⁴ As a result, US persons are prohibited from virtually all transactions involving these parties and any entities that they own, directly or indirectly, fifty percent or more.

The significant set of actions the United States took, and continues to take, against Russia in response to its invasion of Ukraine illustrates that sanctions remain the foreign policy tool of first resort for the United States. Additionally, the United States's unprecedented coordination with its allies on the use of sanctions to fulfil common foreign policy goals and enforcement objectives indicates that the private sector can expect not only the increased use of sanctions going forward, but also more comprehensive, coordinated sanctions actions that span multiple jurisdictions. For example, the United States coordinated its 24 March 2022 sanctions action against 400 individuals and entities comprised of Russian elites, the Duma and more than 300 of its members, and defence companies, in close coordination and partnership with the European Union and the G7. Additionally, in December 2022, the United States, the 27 Member States of the European Union, the members of the G7, and Australia (collectively, the Price Cap Coalition) adopted a price cap of US\$60/barrel on seaborne crude oil of Russian origin. These actions by the US illustrate both its continued preference to utilise sanctions to achieve foreign policy objectives and the increasingly coordinated nature of the United States's sanctions.

Other regulatory action

Separately, while Russia was the primary focus of the United States's sanctions actions over the past year, there were also a number of non-Russia-related sanctions actions. For example, OFAC targeted persons evading US sanctions on Iranian oil, Iranians engaged in cyberattacks, and actors in Iran's ballistic missile programme.¹⁵ Additionally, OFAC implemented sanctions in the virtual currency space, including designating darknet market Hydra and virtual currency exchange Garantex, and two virtual currency mixers, Blender.io and Tornado Cash.¹⁶ Such

14 See, e.g., Press Release, U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs, US Dep't of Tres. (24 February 2022) and Press Release, Treasury Sanctions Kremlin Elites, Leaders, Oligarchs, and Family for Enabling Putin's War Against Ukraine, US Dep't of Tres. (11 March 2022).

15 See, e.g., Press Release, Treasury Sanctions IRGC-Affiliated Cyber Actors for Roles in Ransomware Activity, Dep't. of the Tres. (14 Sep. 2022) and Press Release, Treasury Sanctions Key Actors in Iran's Ballistic Missile Program, Dep't. of the Tres. (30 March 2022).

16 See, e.g., Press Release, Treasury Sanctions Russia-Based Hydra, World's Largest Darknet Market, and Ransomware-Enabling Virtual Currency Exchange Garantex, Dep't. of the Tres. (5 April 2022), Press Release, U.S. Treasury Issues First-Ever Sanctions on a Virtual

actions illustrate that even when pressing geopolitical issues take priority in US foreign policy, like Russia's ongoing assault on Ukraine, OFAC continues to devote resources to all of its sanctions programmes, demonstrating its commitment to comprehensively enforcing all of its sanctions.

Sanctions trends overview

Civil Penalty and Secondary Sanctions Enforcement Actions Civil Penalty Enforcement Actions

OFAC is responsible for the civil enforcement of US sanctions laws and regulations, and the US Department of Justice (DOJ) and the US Attorneys may pursue criminal investigations and enforcement actions for willful violations of US sanctions laws. Notably, OFAC's regulations are enforced on a strict liability basis, which means that OFAC does not need to prove intent or fault to bring an enforcement action and issue a civil penalty. There are numerous ways the US government learns of potential sanctions violations, including through voluntary self-disclosures, suspicious activity reports, referrals from other government agencies or foreign governments, blocked and rejected transaction reports, and through publicly available information, such as media reports. OFAC's Economic Sanctions Enforcement Guidelines at 31 C.F.R. 501 Appendix A outline the factors for calculating the base penalty amounts for violations, including an analysis of factors which can be mitigating or aggravating, such as a willful or reckless violation of the law, awareness of the conduct at issue, cooperation with OFAC, and the existence, nature, and adequacy of a compliance programme, among others.¹⁷

Over the past year, OFAC has issued a number of enforcement actions. In 2022, 14 parties paid a total of US\$42.66 million to OFAC to settle potential civil liability for apparent violations of OFAC sanctions programmes, an increase from a total of US\$20.896 million paid by 20 parties in 2021 and US\$23.56 million paid by 16 parties in 2020. The 2022 enforcement actions involved violations or apparent violations of the following OFAC sanctions programmes:

Currency Mixer, Targets DPRK Cyber Threats, Dep't. of the Tres. (26 May 2022) and Press Release, U.S. Treasury Sanctions Notorious Virtual Currency Mixer Tornado Cash, Dep't. of the Tres. (8 August 2022).

17 See Economic Sanctions Enforcement Guidelines, Appendix A to 31 C.F.R. Part 501 (OFAC Enforcement Guidelines).

Cuba, Iran, Ukraine, Syria, Venezuela, North Korea, Non-Proliferation, Counter Narcotics, Sudan, and a violation of OFAC's Reporting, Procedures and Penalty Regulations.¹⁸

Notably, a recent trend in the sanctions enforcement space is an increased focus by OFAC on the 'causation' theory, that is, non-US persons 'causing' US banks to violate sanctions prohibitions. The general provisions rely on the following language: 'Any transaction by a US person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.'¹⁹ OFAC is increasingly relying upon these expansive 'causation' provisions as the basis for enforcement actions targeting conduct occurring outside the United States by non-US persons, based on the nexus of US financial institutions' involvement in a US dollar transaction.

The 'causation' theory is significant for Latin American companies because it illustrates that, even if a Latin American company does not have any apparent US nexuses in its business operations besides processing related transactions through the US financial system, OFAC could pursue enforcement actions against companies for having 'caused' a US financial institution to violate US sanctions if it engages in prohibited activity. While OFAC was previously focused on enforcing sanctions against the financial institutions processing such sanctionable activity, it has turned its focus to the companies which cause the financial institutions to process US dollars linked to sanctionable activity. Such actions by OFAC reinforce the importance for Latin American companies to ensure that they ring fence any high-risk activity from US touchpoints, or they may risk becoming the target of an OFAC enforcement action.

This trend is illustrated by OFAC's April 2022 settlement with Toll Holding Limited (Toll), an Australian-based freight forwarding and logistics company, based on OFAC's determination that Toll caused over 2,900 payments to flow through the US financial system in connection with shipments that involved sanctioned jurisdictions or sanctioned persons. Previously, on 14 January 2021, the DOJ and OFAC reached resolutions with PT Bukit Muria Jaya (BMJ), an Indonesia-based paper products manufacturer, that directed payments for its North Korean exports to its US dollar bank account at a non-US bank, which

18 See Civil Penalties and Enforcement Information, U.S. Dept. of the Tres., available at <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

19 See, e.g., 31 C.F.R. 542.205 of the Syrian Sanctions Regulations and 31 C.F.R. 560.203 of the Iranian Transactions and Sanctions Regulations.

caused US banks to clear wire transfers related to these exports. Additionally, on 16 July 2020, the DOJ and OFAC announced parallel resolutions with Essentra FZE Company Limited (Essentra), a UAE-based supplier, for selling cigarette products it knew to be ultimately destined for North Korea. OFAC concluded, among other things, that Essentra's receipt of three payments into its bank accounts at the non-US branch of a US bank caused the branch (a US person) to export financial services to North Korea. Finally, while this enforcement action was not based on the 'causation' theory as the target was a US person, it highlights the sanctions risk of using US dollars: on 27 May 2022, OFAC entered into an enforcement action with Banco Popular de Puerto Rico, a Puerto Rican bank, which processed 337 transactions totalling US\$853,126 in violation of US sanctions on behalf of two individuals who were low level employees of the Government of Venezuela.²⁰

While OFAC's use of the 'causation' theory in enforcement actions has increased over the past few years, such enforcement actions did not come without warning. Specifically, when OFAC issued its Framework for OFAC Compliance Commitments in May of 2019 (OFAC Framework), OFAC included a section specifically providing guidance on the sanctions risk of the use of the US financial system in prohibited activity.²¹ The OFAC Framework was published in order to provide organisations subject to US jurisdiction, as well as foreign entities that conduct business in or with the United States or US persons, or that use US-origin goods or services, with a framework on the essential components of a sanctions compliance programme. The document also outlines how OFAC may incorporate these components into its evaluation of apparent violations and resolution of investigations resulting in settlements and includes an appendix that offers a brief analysis of some of the root causes of apparent violations of US economic and trade sanctions programmes OFAC has identified during its investigative process.

Section 5 of the Framework, 'Utilizing the U.S. Financial System, or Processing Payments to or through U.S. Financial Institutions, for Commercial Transactions Involving OFAC-Sanctioned Persons or Countries,' notes that:

20 See Civil Penalties and Enforcement Information, U.S. Dept. of the Tres., for a list of OFAC's enforcement actions, available at <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

21 See A Framework for OFAC Compliance Commitments, OFAC, https://www.treasury.gov/resource-center/sanctions/Documents/framework_ofac_cc.pdf (OFAC Framework).

Many non-US persons have engaged in violations of OFAC's regulations by processing financial transactions (almost all of which have been denominated in US dollars) to or through US financial institutions that pertain to commercial activity involving an OFAC-sanctioned country, region or person. Although no organisations subject to US jurisdiction may be involved in the underlying transaction – such as the shipment of goods from a third country to an OFAC-sanctioned country – the inclusion of a US financial institution in any payments associated with these transactions often results in a prohibited activity (e.g., the exportation or reexportation of services from the United States to a comprehensively sanctioned country, or dealing in blocked property in the United States). OFAC has generally focused its enforcement investigations on persons who have engaged in wilful or reckless conduct, attempted to conceal their activity (e.g., by stripping or manipulating payment messages, or making false representations to their non-US or US financial institution), engaged in a pattern or practice of conduct for several months or years, ignored or failed to consider numerous warning signs that the conduct was prohibited, involved actual knowledge or involvement by the organisation's management, caused significant harm to US sanctions programme objectives, and were large or sophisticated organisations.²²

These 'causation' theory enforcement actions, coupled with OFAC's guidance regarding the US financial system in the OFAC Framework, signal that the US government will continue to enforce sanctions against non-U.S. persons, even if the transaction is completed outside of the U.S., if the US financial system is involved. Based on these recent enforcement actions, non-U.S. companies, including in Latin America, should take notice of the growing risk of both civil enforcement by OFAC and criminal enforcement by the DOJ for the use of the US financial system in connection with sanctionable activity, as we predict the US government will continue to target this activity.

Secondary sanctions

In addition to civil enforcement actions, OFAC also enforces its sanctions via secondary sanctions. As highlighted above, non-US persons can become sanctioned themselves, that is, added to OFAC's SDN List, for engaging in certain significant activity with sanctioned persons. Some recent Latin American-related secondary sanctions enforcement actions include the following: On 9 October 2020, OFAC sanctioned Nicaraguan financial institution *Cooperativa De Ahorro Y Credito Caja Rural Nacional RL* for having materially assisted,

22 OFAC Framework at 10.

sponsored, or provided financial, material, or technological support for, or goods or services in support of, Banco Corporativo, SA, an entity identified on OFAC's SDN List.²³ Additionally, on 1 December 2020, OFAC designated Jhon Fredy Zapata Garzon pursuant to the Foreign Narcotics Kingpin Designation Act for materially assisting the international narcotics trafficking activities of the Clan del Golfo. Three of his family members and associates were also designated along with four businesses they own or control.

Another secondary sanctions enforcement example is from 2 March 2023, when OFAC sanctioned eight Mexican companies linked to a timeshare fraud on behalf of the Cartel de Jalisco Nueva Generacion (CJNG), a violent Mexico-based organisation that traffics a significant proportion of illicit fentanyl and other deadly drugs that enter the US. These eight companies, Servicios Administrativos Fordtwo, SA de CV, Integracion Badeva, SA de CV, JM Providers Office, SA de CV, Promotora Vallarta One, SA de CV, Recservi, SA de CV, Corporativo Title I, SA de CV, Corporativo TS Business Inc, SA de CV, and TS Business Corporativo, SA de CV were sanctioned for being owned, controlled or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, SDN CJNG.²⁴ These recent actions illustrate OFAC's expansive sanctions authority to add non-US persons to the SDN List despite the absence of a US nexus in their activities. Such actions emphasise the need for Latin American companies to have a risk-based know-your-client (KYC) programme and screening procedures in place to ensure they are not dealing with any persons who carry sanctions risk.

Key themes and implications

These recent trends in the US's sanctions regulatory developments and enforcement environment offer insight into where the future of sanctions is headed and provide an opportunity for Latin American companies to use this insight to improve their sanctions compliance efforts and mitigate potential risk.

Overall, the US's sanctions regulatory developments illustrate a number of key trends: sanctions remain a preferred foreign policy tool to influence behaviour and achieve the US government's foreign policy objectives; the US government's recent coordination on sanctions with its allies indicates continued future international cooperation and more comprehensive multi-jurisdictional sanctions; and

23 See Press Release, Treasury Sanctions Nicaraguan Financial Institution and Officials Supporting Ortega Regime, Dep't of the Tres. (9 Oct. 2020).

24 See Press Release, Treasury Sanctions CJNG-Run Timeshare Fraud Network, Dep't. of the Tres. (2 March 2023).

the US will continue to calibrate its sanctions based on its target's behaviour by increasing sanctions when such behaviour goes against US policy objectives, as seen in the Russia context, and lifting sanctions when the target engages in favorable behaviour, as seen in the Venezuela context.

These trends offer some key lessons for Latin American companies. First, and most importantly, sanctions will continue to be the preferred foreign policy tool of first resort for the United States. Additionally, sanctions will more frequently be coordinated amongst allied nations and implemented on a multijurisdictional level moving forward. Accordingly, we can expect increasingly frequent rounds of coordinated and complex sanctions in the future. For Latin American companies that engage in international business, or subject themselves to US jurisdiction via the use of the US dollar or other US touchpoints, these trends indicate that such companies' sanctions risk will continue to grow. Even if Latin American countries are not using a US nexus in their normal business operations, they could still risk being designated themselves if they engage in certain activities with persons identified on OFAC's SDN List.

In our previous chapter, we outlined some ways that Latin American companies can mitigate their sanctions risk, which we continue to recommend in this chapter. These recommendations include: ensure appropriate, risk-based compliance procedures are in place; establish KYC or counterparty diligence and screening procedures; identify and ring-fence US touchpoints from high-risk transactions; and consider voluntarily disclosing any identified violations. We also recommend companies take steps to monitor sanctions developments, as the US is frequently implementing new sanctions and modifying existing sanctions, as illustrated above. We further recommend, as needed, that Latin American companies take steps to familiarise themselves with the sanctions programmes in all of the jurisdictions in which they operate, given the increasingly coordinated and global nature of sanctions.

Separately, trends in the United States's sanctions enforcement actions also highlight key takeaways for Latin American companies. Specifically, and as illustrated above with respect to civil penalties, the United States is asserting broader jurisdictional reach over non-US persons that are engaging in transactions that have no direct contact with the United States, other than making or receiving payments in US dollars. Accordingly, Latin American companies should refrain from making or receiving US dollar payments involving OFAC-sanctioned jurisdictions and persons, as such a US nexus alone causes otherwise permissible conduct to fall under US jurisdiction. To sufficiently mitigate this risk, we

recommend that Latin American companies consider incorporating these policies within their broader compliance programme to ensure compliance with OFAC sanctions.

Additionally, the secondary sanctions enforcement actions are significant as they highlight that Latin American companies should maintain a KYC programme and screening procedures in place to ensure they are not dealing with any sanctioned persons, as such activities could lead to an entity being identified on OFAC's SDN List.

Conclusion

Increasingly, sanctions have become the US's preferred response when geopolitical issues arise and a key tool to accomplish its foreign policy and national security objectives. Considering the importance of sanctions in the US's broader mission, we anticipate the trends outlined above, including increased use of sanctions, future coordinated sanctions actions across multiple jurisdictions, the calibration of sanctions based on a target's behaviour, and increased enforcement actions against non-US persons who involve the US financial system in sanctionable activity or engage in other sanctionable activity, will continue. By maintaining awareness of such US sanctions trends and activities by OFAC, Latin American companies can take the necessary steps to ensure they have the policies and procedures in place to prevent future violations.