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Anti-Corruption

Mexico: Trends & Developments

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Trends and Developments

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Anti-corruption Developments and the Relevance of Corporate Integrity Programmes

Overview and developments

Mexico improved its position in the Corruption Perceptions Index published by Transparency International for 2019, climbing eight positions from the previous ranking published one year before, in a move from position 138 to 130 (out of 198 countries, where number 1 is the least corrupt and 180 is the most corrupt).

The foregoing should be considered as a silver lining for a country that has historically struggled with institutional and long-established corruption practices at all levels of public and private office. However, recent legal reforms aiming at tackling and reducing corrupt practices and money-laundering, the prosecution of some high-end former public officers and white-collar crimes, and the creation of a yet-to-be improved programme for preventing and successfully prosecuting corrupt acts (the National Anti-corruption System), seem to be delivering some results amid the current challenging social, economic and political environment in the country and in the world.

The National Anti-corruption Policy

In February of this year, as part of the implementation of the 2015 reform to the Mexican Constitution on anti-corruption matters, the National Anti-corruption System Executive Office issued the National Anti-corruption Policy, a dossier of 40 public policies for performing a number of actions with four main targets:

- fighting corruption and impunity;
- fighting arbitrariness and abuse of power;
- fostering the improvement of public operations and links between government and civil society; and
- involving society and the private sector in those efforts.

For purposes of fighting corruption and impunity, the Policy addresses issues and sets forth actions for the prevention, detection, reporting, investigation and sanction of administrative offences, and the correct procurement of justice in connection with corruption-related offences.

Regarding arbitrariness and abuse of power, the Policy provides for actions for the continuous education and training for integrity in public service, the creation of effective institutional processes and the implementation of accurate audit and surveillance systems.

For purposes of improving public operation and involving civil society, the Policy presents actions that focus on creating public programmes and contact points between the Government, civil society and the private sector, in connection with business integrity and responsibility, as well as education and communication programmes for controlling corruption.

The National Anti-corruption Policy is aligned with the National Development Plan and the National Programme for Fighting Corruption and Impunity.

Integrity Business Register

The Ministry of Public Administration has also recently launched an Integrity Business Register, whereby companies that comply with different requirements, and that perform their activities under principles of ethics, honesty, and lawfulness, may apply to obtain recognition for corporate integrity.

The creation of such a Register is part of the efforts of the Mexican Government to align and catch up with international commitments and best practices, such as those proclaimed by the United Nations Convention against Corruption, *inter alia*.

The main purpose of recognising good corporate practices is to involve private entities in the process of fighting corruption, by encouraging them to implement policies, codes and controls on ethics and anti-corruption, surveillance, transparency, training, and human resources, among others. Companies that succeed in obtaining their registration and corresponding recognition will also be considered and preferred in public bid processes for contracting with the Government (which, in turn, will provide public agencies with a better control of suppliers and government vendors).

Anti-corruption guidelines related to money laundering

The enacting of the Law on Prevention and Identification of Operations with Resources of Unlawful Origin on 2012 (the Anti-Laundering Law and which since then has been the subject of constant reforms and improvements) was a game-changer for Mexico's efforts to prevent and prosecute money laundering. By defining a list of "vulnerable activities" which are subject to strict surveillance and control (including obligations to submit periodical reports of activities to the Tax Administration Agency) many companies adopted and implemented robust anti-money laundering policies and systems to comply with the obligations imposed by the aforementioned law.

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Following international practices and recommendations issued by the Financial Action Task Force (FATF), the Unit of Financial Intelligence of the Mexican Secretary of Finance and Public Credit published last September the Anti-corruption Guidelines for those who carry out vulnerable activities, with the purpose of assisting entities that are subject to compliance with the obligations set forth by the Anti-Laundering Law to identify and mitigate further the risks that they could face in connection with acts of corruption derived from the relationships and activities of any of their clients and users. Although those Guidelines are not enforceable and do not provide for further obligations supplementing those of the Anti-Laundering Law and its Regulations, it seems to be a thorough and helpful tool for public and private collaboration for the protection and detection of illegal practices.

USMCA and anti-corruption

From the first negotiation of the North America Free Trade Agreement (NAFTA), which has now been replaced by the United States-Mexico-Canada Agreement (USMCA), corruption and the wide spectrum of ways in which it could negatively affect trade operations in the North America region has been a paramount concern. As a result, negotiators of the new treaty that came into force in July 2020 added a specific chapter (Chapter 27) to deal with anti-corruption, which focuses on four main aspects:

- measures (including legislative) to tackle corruption and re-categorise related criminal offences;
- promoting integrity among public officers;
- the participation of the private sector and civil society; and
- application and enforcement of laws.

The anti-corruption provisions of the USMCA provide for an opportunity of real and fruitful co-operation among the three nations and, in the case of Mexico, the Government faces a fair challenge to continue being competitive in one of the world's largest trade markets.

Corporate integrity programmes and their relevance to compliance and doing business

As has been seen, there are several developments and efforts going on in Mexico in the public and private sectors with the purpose of confronting corruption and preventing illegality, based on best national and international practices. Corporate integrity – which may be understood as the group of principles and values through which a company combines and reconciles its business activities with ethics, transparency, social responsibility and the observance of law – amid the wider concept of corporate compliance has raised its relevance in the day-to-day business operations in Mexico.

Formerly considered as a “nice to have” feature, corporate integrity and compliance programmes are now perceived as a must-have intangible asset that purports to add major value and protection to companies and brands. The evolving Mexican legal system, which aims to become more sophisticated inasmuch as it is willing to keep the pace with main international conventions, recommendations and best practices issued by the United Nations, the Organization of American States, the Organization for Economic Co-operation and Development and the Financial Action Task Force, has made a move towards focusing on unlawful corporate practices.

As a result of the foregoing, the Mexican Government has issued a number of laws, regulations and amendments to existing laws, which, inter alia, have the purpose of eradicating and sanctioning not only individuals but also corporations on:

- tax evasion;
- tax and legal schemes intentionally structured to evade tax payments and breach the law;
- corruption, including acts by private entities while doing business with government agencies;
- money-laundering, embezzlement, financing of criminal organisations and operations with resources with illicit origins;
- corporate abuse;
- breach of law by vendors or providers (supply chain) discrimination, inequality and psycho-social harm in working centres; and
- violation of data privacy, among others.

Without doubt, some of those laws provide greater legal certainty and should have a positive impact in the mid-term. However, other laws, regulations and requirements, though aiming in the right direction as to their main purpose, provide for strict requirements and measures that result in the convenience of a real and well-structured compliance programme according with a risk assessment of each company.

Failing to comply with obligations set forth by Mexican laws and international treaties (such as the Federal Tax Code, the General Law on Administrative Responsibility, the Anti-Laundering Law, the National Asset Recovery Law, the Federal Labor Law, the Law on Protection of Personal Data in Possession of Private Persons, USMCA, to name a few) may result in the joint and several liability of business owners, shareholders, directors, officers and employees that are subject to severe sanctions, ranging from economic fines, suspension or ban from activities and blacklisting, suspension of digital certificates to issue electronic invoices, to criminal sanctions, including jail.

In a nutshell, companies in Mexico (and their shareholders, directors, officers, representatives) that are not willing or planning to establish a system or measures to guarantee compliance with laws and engage in an effort to set a business model that is sustainable for these changing times at a global level, and which involves its entire supply chain, including suppliers and customers, are on the brink of being subject to relevant liabilities and contingencies that may result in severe sanctions.

By the same token, it is important to consider that the General Law on Administrative Responsibility provides that companies, acting through their representatives, are subject to sanctions for serious administrative offences. However, when determining the liability of a company, the regulator will take into consideration whether that company has an integrity policy in place, which includes:

- handbooks or codes of organisation and procedures clearly describing each of the company's areas and tasks, as well as the chain of command and leadership;
- a code of conduct with systems and mechanisms of real application;
- accurate and effective control, surveillance and audit systems;
- reporting and systems for denouncing others, both internally and those in authority, as well as defined disciplinary consequences and processes;
- systems for training personnel on integrity;
- mechanisms for assuring the transparency and publicity of the company's interests;
- whistle-blowing protection and anti-retaliation policies; and
- human resources policies which aim to avoid hiring persons who could result in a risk for the integrity of the corporation, and which do not authorise discrimination for any reason.

With regard to the foregoing, it is easy to realise that the creation and implementation of robust compliance and integrity programmes within companies, aimed at fostering and promoting the prevention, control and legal compliance in different subjects and areas is essential and should be included in any business model. Corporate compliance and integrity programmes are an ally in the safe and competitive operation of a business, optimising its material and human resources, adding value and increasing competitiveness. Hence, compliance and integrity programmes not only shield the company's interests from legal exposure and liability, but offer the construction of a culture of compliance, good practices and lawfulness within the organisation, delivering for the company a competitive advantage vis-à-vis businesses that do not develop and implement compliance and integrity programmes.

As a final observation and conclusion, it is deemed that carrying out thorough specific and case-by-case risk assessment is essential for companies to create tailored and effective compliance programmes that protect the company from multiple angles, including partners' and directors' estate and corporate reputations, especially in the current evolving legal environment. At the same time, the performance and observance of good practices, keeping competitive advantages and added value will most likely incentivise the welfare of businesses and industry, as well as companies' involvement in significant transactions.

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Chevez Ruiz Zamarripa has developed a specialised and multidisciplinary compliance and corporate integrity practice area, in order to provide clients, inter alia, with the tools they need to implement or optimise a compliance programme, creating the processes, policies and procedures needed to ensure compliance with Federal and State Laws and their particular industry regulations. The implementation of such programmes

allows the firm's clients to act in a preventative manner, reducing their exposure to administrative penalties or even criminal sanctions, avoiding exposure of companies and any liability to their stockholders and directors. Special focus has been given to the anti-corruption and anti-money laundering practices in considering this administration policy to tackle such problems in Mexico.

Authors



Alejandro Torres concentrates his professional practice mainly on strategic planning, consulting and litigation in the tax and legal administrative areas in a wide range of sectors and transactions, representing domestic and international clients. He litigates complex matters before

federal and state administrative and tax courts and carries out constitutional actions at the level of the Supreme Court of Justice. Alejandro is an outstanding expert in alternative dispute resolution (ADR) proceedings in tax matters and is recognised for his negotiation and mediation skills in challenging cases before the Mexican Tax Ombudsman. He also leads the anti-corruption law practice of the firm.



Rafael Vallejo is a broadly experienced legal adviser to Mexican and International companies in labour, social security and fringe-benefit matters. He also advises companies on the prevention of labour contingencies, labour regulatory processes and labour litigation strategies, including

negotiation of individual and collective labour conflicts. Likewise, he is experienced in international labour issues, including the start-up of companies in Mexico and exit thereof, in matters related to global mobility, designing and imparting training programmes for adaptation of foreign corporate policies to Mexican law.



Fernando González combines in his professional practice corporate and transactional work, having significant experience in compliance matters, including anti-corruption, the design of preventative mechanisms and compliance governance structures, anti-money

laundering, anti-bribery training and in internal investigations. His compliance practice includes the design of sophisticated ethics and integrity policies and programmes aimed at adding value to his clients' business and aligning with Mexican law and other international regulations, such as the FCPA and the UKBA.

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