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**CORPORATE COMPLIANCE SYSTEMS:
ASSESSING THE MODEL FOR MÉXICO**

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Corporate Compliance Systems:

ASSESSING THE MODEL FOR MÉXICO

Introduction:

Mexico through national legislation has an international legal obligation to implement treaties, by acceptance, ratification or accession, and is a signatory country of the following International anticorruption conventions:

- Organization of American States (OAS) signed in 1996 the Inter-American Convention against Corruption (ICAC), under the Organization of American States, and was the first international legal agreement to prevent, detect, sanction and eradicate corruption. Mexico ratified the agreement on June 2, 1997 and entered into force on July 1, 1997.
- Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD). It rests the obligation of governments and business to instrument and approve mechanisms to prevent, detect and sanction offenses pledged by natural or legal persons. Persons offering or promising pecuniary or other advantages directly or through mediators to a foreign public official in international business transactions in order that the official acts or desists from acting in relation to the enactment of official duties. Mexico ratified the agreement on May 27, 1999 and entered into force on July 26, 1999.

- United Nations Convention against Corruption (UNCAC) establishes methods and agreed standards for international cooperation and for local effort to combat corruption. Mexico ratified on June 24, 2004 and entered into force on December 14, 2005.¹

Trying to improve investment opportunities and international trades, Mexico has international connections due to its economy so Mexican business may be exposed to the probability of bribing foreign public officials. To promote itself as an ethical and safer place to do business, Mexico should develop anti-corruption and anti-bribery laws, with the help of different authorities from other countries that are willing to cooperate in transnational investigations. The countries authorities must have agreements with Federal Government contractors by setting up procedures and policies for ethical programs, internal control, and self-regulation to develop and promote a compliance culture.

Mexico has one of the highest risk corruption environment, for its poor regulations, an example of this is the Wal-Mart case, where the subsidiary Wal-Mart de Mexico, had arranged an enormous operation to win dominance by bribing to obtain permits and increase market share, since 2005, this was published in the New York Times on April 21, 2012². This article alleged that Wal-Mart Stores, Inc. one of the world's largest retailers implemented an ambitious growth strategy. A far-reaching practice by making payments to Mexican officials and bureaucrats, in order to accelerate the authorization to construct new stores, making illegal compensations through third parties, and reported a dual set of books and records. These payments were for city and mayor council members, urban planners, low level bureaucrats. More than 24 million questionable payments were made in order

¹ Stocker, F.T., 2012. Surveying Mexico's Anti-Corruption Landscape. MAPI

² <http://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silences.html?>

to reduce environmental impact fees, secure zoning approvals, in advance with the commitment of neighborhood leaders that were in connection with the construction developments. Relevant enforcement authorities in the United States and Comptroller officer in Mexico have launches investigations. This case has become the highest profile FCPA/bribery investigation reaching implications both in the US and Mexico, as in other global companies.³

1.1 MEXICO: New Federal Anti-corruption Law for Government Procurement

Because Mexico is taking a hard position against corruption, on June 11, 2012 published in the Mexican Official Gazette the new Anti-Corruption Law for Government Procurement and Public Auctions in Mexico named FEDERAL ANTI-CORRUPTION LAW FOR GOVERNMENT PROCUREMENT. It went into effect on June 12, 2012. This law brings Mexico to fulfilling the OECD obligations increasing sanction where most public corruption occurs.

This Law complements the legal Anti-Corruption frame which includes the next Mexican Laws:

- Federal Criminal Code.
- Federal Law of Administrative Accountability of Public Officials.
- Law on Government Acquisitions, Leases and Services.
- Law on Government Construction and Public Work and Related Services.

A key purpose of this Law is that upon a Mexican or foreign individual or company in a Federal Public Contract will be responsible and sanctioned for

³<http://www.omniture.com>"title="WebAnalytics">13</sup>.

¹³ Available in: <http://www.transparency.org/cpi2011/in.detail>
(a) See appendix

3.1 Would be difficult to use in some countries

To involve international relationship and attract investment, governments must have anti-corruption and anti-bribery concerns. Countries with strong anti-bribery and anti-corruption laws will be able to enter in international negotiations easily before those with impunity and high levels of corruption. Because Investors will not feel fortified to be where there are weak institutions, governments have to deal with political corruption that affects contracts and investment that makes operations too risky and fix poor anti-corruption regulations. It is a challenge for most countries that their government implements the legal framework and institutional changes to acquire a practical improvement to ethics and transparency. Organizations should have different mechanisms to determine if law and provisions are being applied well, and review them at least once a year.

Culture of corruption

Every country worldwide must bring multilateral agreements against corruption by promoting, harmonizing and developing different mechanisms as policies related to prevention, detection, punishing and eradicating corruption in public and private sectors, criminalizing bribery both domestic and foreign, money laundering and trading influence, embezzlement, misappropriation or diversion of property by a public official. Searching high standards at both local and national levels, public and private sectors must share principles to bring will and capabilities of people and governments fighting corruption and renovate country's culture¹⁴

¹⁴ Available in: <http://inflouse.state.gov/government/forpolicy/docts/ijde1206.pdf>

Senior leadership not committed to fighting corruption.

Countries must have their compliance programs, showing the risks that may face along with business organizations. They should address their controls and procurements that have been proven, and can help the organization improve its own. Senior Management must ensure the values and emphasize actions of rectitude and veracity to exclude bidding from future business if they have a bad reputation. Employees must have a high level of training and business organization must ensure all of them attend these training sessions.

High level management must be committed to preventing corruption, by not hiring any person, without exception, that has been in trouble before, and hire qualified employees with ethical principles and good reputations for honesty and reliability in dealing business¹⁵.

A global transparent economy will be created when organizations share common policies and measures in collaboration with governments.

Prosecutions not an effective deterrent

Enormous anti-corruption programs have failed, because there is absence of information and political will. In some economies dealing daily with corruption seems better than combating it, because it is seen as only a wrong behavior. The problem is that only few individuals benefit, but has a high cost to society, governments and private sector. Corruption misallocates resources that would be

¹⁵ Available in: <http://works.bepress.com/cgi/viewcontent.cgi?article=1059&context=marcotavanti>

used in other services, has negative effects in domestic and foreign investment, reduces efficiency and competition, lowers growth levels, productivity and innovation, exacerbates poverty and inequality, political instability and high crime rates.

Moral judgment and common sense are not sufficient to effectively win the battle against corruption. Because every organization is different, there is no program that will guarantee an organization that is safe from FCPA risk. Control and procedures must produce results to help develop its own compliance program, it should develop tools and information to make it successful, finding the way to implement national and international legislation and reduce corruption. There must be zero tolerance.

Corruption in enforcement agency itself a problem

Corruption fails because there is absence of political determination and not understanding the compliance programs, agencies must have well trained professionals implementing strategic plans in prevention, detection and finding the consequences of corruption.

There should be an administrative action such as suspension or contract termination, in the extreme cases the consequence may be a term in prison.

3.2 Some corporations might adopt in self-interest

A company's management must ensure its compliant is going along with the ethical code and anti-corruption laws that have being adopted and implemented in great lengths. The management must be the first to know the potential or actual problems to ensure that the internal communication plans, appropriate systems and reporting mechanisms are in place. If these reporting procedures do not exist, the malpractices surely will continue.

Compliance gives a competitive advantage to organizations that in the past didn't have to provide results. Now they are asked to do so, even with few resources. In the compliance reportage within the budget, organizations are having a hard time. Organizations' honest interest is viewing for safeguard investors and extenuating risks as fraud and bribery, so they are implanting compliance into business process that gives them the opportunity to innovate and grow. Compliance executives must look for tools that help them have the adequate controls and information for efficient results. Compliance helps organizations to spend much more time improving and not just operating business¹⁶.

Because international reputation is a factor to take in consideration, countries have different requirements according to their economic condition. It is reflected in terms of aid as an incentive authorizing and enforcing anticorruption measures that bring main progress and benefits from international cooperation. Having anti-corruption regulations will reduce impunity levels, an active participation by the society in anti-corruption matters and social auditing will develop progress in this challenge¹⁷.

¹⁶ Wilhelms,D.2010, Using GRC to drive Innovation an Competitive Advantage

¹⁷ Central American anti-corruption efforts.

4 CONCLUSION:

By working together, public and private partnerships can meet security challenges that bring prosperity to economies and health safety to the people. With the commitment of leaders to make great efforts for transparency and anti-corruption will improve societies in expanding markets across the economies. Countries must make anti-corruption a top priority, recognizing the role in attracting foreign and internal investment and promoting economic growth.

Corruption stifles international and entrepreneurship investment as businesses are less interested to invest in markets where corruption is used to abuse positions for self-enrichment. Having information and education campaigns by making a substantial legal reform in the organization will stop corruption. Once corruption is stopped there will not be the incentive to corrupt, which will reduce impunity.

Countries should ratify International agreements corresponding to internal regulations against corruption, in order to have strong institutions with anti-corruption and anti-bribery laws.

5) APPENDIX

NOTE *Section 7, 8 and 9 are part of the Bribery Act 2010 Chapter 23 as:

Section 7: Failure of Commercial Organisations to prevent bribery.

(1) A relevant commercial organization (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending-

(a) to obtain or retain business for C, or

(b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A---

(a) is, or would be, guilty of an offence under section 1 or 6 (whether or not A has been prosecuted for such an offence), or

(b) would be guilty of such an offence if section 12(2)(c) and (4) were omitted.

(4) See section 8 for the meaning of a person associated with C and see section 9 for a duty on the Secretary of State to publish guidance.

(5) In this section-----

“partnership” means---

(a) a partnership within the Partnership Act 1890, or

(b) a limited partnership registered under the Limited Partnerships Act 1907,

or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

“relevant commercial organisation” means---

(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),

(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and, for the purposes of this section, a trade or profession is a business.

Section 8: Meaning of associated person

(1) For the purposes of section 7, a person (“A”) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C does not matter.

- (3) Accordingly A may (for example) be C's employee, agent or subsidiary.*
- (4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and no merely by reference to the nature of the relationship between A and C.*
- (5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.*

Section 9: Guidance about commercial organisations preventing bribery

- (1) The Secretary of State must publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentions in section 7 (1).*
- (2) The Secretary of State may, from time to time, publish revisions to guidance under this section or revised guidance.*
- (3) The Secretary of State must consult the Scottish Ministers before publishing anything under this section.*
- (4) Publication under this section is to be in such manner as the Secretary of State considers appropriate.*
- (5) Expressions used in this section have the same meaning as in section 7¹⁸.*

¹⁸ Bribery Act 2010 (c23) Document Generated 2012-05-30