Comparison of Effects of Corruption on Business in the United States and Latin America

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Recent corruption scandals in the United States involving Alaskan Senator Ted Stevens and Illinois Governor Rod Blagojevich highlight the problems that corruption continues to pose to honest government in the United States. But despite these high-profile scandals, a September 2008 survey on corruption conducted by Miller & Chevalier Chartered found that business people operating in the U.S. are not significantly concerned on a day-to-day basis about corruption affecting their businesses, perhaps as a result of robust U.S. enforcement. This finding is in stark contrast to another finding in the same survey regarding business conditions in Latin America -- respondents doing business in Latin America say that corruption there is a significant obstacle.

In the survey of over 200 executives in Latin America and the United States conducted by Miller & Chevalier and six regional law firms, the vast majority of respondents (75%) who conduct business in the United States say that corruption is not a significant obstacle to doing business in the United States. But nearly half of all respondents (48%) believe corruption is a significant obstacle to doing business in Latin America. And a staggering 59% of respondents believe that they have lost business to competitors in Latin America who made illicit payments. Of those, only 9% reported their concerns to authorities. The responses also indicate that corruption in Latin America permeates all levels of government.

Survey responses also differed with respect to expectations on whether countries would be likely to enforce their own anti-corruption laws. Unlike the United States where domestic anti-bribery laws are routinely prosecuted and the Foreign Corrupt Practices Act (FCPA) is aggressively enforced to combat foreign bribery, business executives in Latin America express cynicism regarding anti-corruption laws in the region. In fact, fewer than one in five respondents (18%), believe that the anti-corruption laws are effective in the country where they work. More than a third of respondents do not think a company, individual, or government official in Latin America would be punished for making or receiving illicit payments related to obtaining business. These findings are surprising given that the countries in the region adopted the first international convention requiring the implementation of anti-corruption laws (the Organization of American States' Inter-American Convention Against Corruption, which was adopted in 1996).

Companies doing business in the region can take concrete steps to mitigate their concerns regarding the effects of corruption on their businesses. They can implement compliance safeguards to address the corruption risk and avoid violations of the FCPA. One such step is to carefully select business partners in the region. Conducting due diligence on third parties, screening out high-risk candidates, and addressing any red flags that due diligence reveals reduce, but do not necessarily eliminate, the risk of improper conduct by a third party. Requiring third parties to agree to contract terms prohibiting improper payments, conducting FCPA training, and monitoring the activities can further reduce FCPA risk.

Obtaining third party cooperation in this process can often be challenging. The survey results indicate, however, that many U.S. company counterparts in Latin America have their own anti-corruption policies and would understand the rationale of due diligence inquiries. Three-quarters of Latin American respondents report that their companies have taken steps to protect themselves, such as instituting anti-corruption policies and procedures and implementing training programs. Not surprisingly, respondents from multi-national companies lead with way, with 82% stating that their companies have taken steps to protect the company from corruption risks. However, a healthy 55% of respondents from companies based in Latin America report that their employers also maintain anti-corruption safeguards. Moreover, 55% of all respondents believe that dealing with corruption risks is a top priority of their companies, with 66% believing that the importance of preventing corruption has increased for their companies over the last five years.

Similarly, awareness of the FCPA is relatively high in Latin America, with two-thirds of respondents (66%) “somewhat” or “very” familiar with the FCPA. Again, respondents from multi-national companies are most aware, with 77% “somewhat” or “very” familiar with the FCPA. Regional companies lag, with 14% very familiar, 27% somewhat familiar, and 59% not familiar with the FCPA.

With better enforcement of anti-corruption laws in Latin America, governments can do more to facilitate better business environments there. As the U.S. Government continues to aggressively enforce the FCPA against non-U.S. companies and individuals, awareness of the FCPA is likely to increase in Latin America. These developments will lead more companies doing business in Latin America to adopt compliance programs. They will also lead to greater cooperation between U.S. companies and Latin American countries when conducting due diligence. Such developments can work to level the playing field throughout the Hemisphere regarding business risks related to corruption.

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