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Policy Perspectives: Confronting Corruption in Latin America

by James G. Tillen and J. Matteson Ellis

Corruption is a significant obstacle plaguing businesses throughout the Americas, according to a September 2008 survey of over 200 executives in Latin America conducted by Miller & Chevalier Chartered and six regional law firms. Nearly half of all respondents consider corruption a significant obstacle, almost 70 percent believe that they have lost business to competitors who made illicit payments.

Mexico was rated the most corrupt country, Chile the least. Seventy-seven percent of Mexican, 63 percent of Brazilian, 59 percent of Argentine, 45 percent of Peruvian, 34 percent of Colombian, and 14 percent of Chilean respondents believe their country's Customs agencies exhibit significant corruption.

The recent U.S. case against Siemens, in which the company was charged with engaging in a pervasive pattern of bribery involving almost $1.4 billion in illicit payments to government officials, including officials in Argentina and Venezuela, illustrates the prevalence of the practice.

Unlike the United States where the Foreign Corrupt Practices Act (FCPA) is aggressively enforced to combat corruption, business executives in Latin America express cynicism regarding anti-corruption laws (a scant 18 percent believe anti-corruption laws are effective). 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).

A belief that these laws are not enforced contributes to their perceived ineffectiveness. More than a third of respondents do not think a company, individual, or government official would be punished for making or receiving illicit payments related to obtaining business.

Even so, past FCPA cases of U.S.-based companies highlight the risk to doing business in the region. Companies, or employees of companies, like Alcatel (telecommunications), Willbros (oil services), Tyco (infrastructure), and IBM (technology) have all been subject to FCPA action. In the recent Siemens judgment, the company paid penalties to settle charges that it bribed Venezuelan officials for a contract to design and build metro transit lines and to sell national identity cards.

It is thus critical that U.S. companies doing business in Latin America implement compliance safeguards to address the corruption risk. 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 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 and monitoring the activities can further reduce FCPA risk.

Even though obtaining third-party cooperation in this process can often be challenging, survey results indicate that many counterparties in the region have their own anti-corruption policies and would understand the rationale of due diligence inquiries. Not surprisingly, respondents from multinational companies lead with way, with 82 percent stating that their companies have taken steps to protect the company from corruption risks. Overall, a healthy 55 percent of respondents from Latin America companies report that their employers maintain anti-corruption safeguards (66 percent believe 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 the region, with two-thirds of respondents (66 percent) “somewhat” or “very” familiar with it. Again, respondents from multinational companies are most aware, while regional companies lag.

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. This trend, especially if coupled with increased enforcement of the anti-corruption laws in Latin America, could lead more companies in the region to adopt compliance programs and to greater cooperation with U.S. companies conducting due diligence. wt

James G. Tillen is a Member, and J. Matteson Ellis is a Senior Associate, at the law firm of Miller & Chevalier Chartered. For a copy of the Latin America Corruption Survey Report, please visit www.milchev.com.