

Anti-Corruption Developments in Mexico

OVERVIEW

While corruption in Mexico has been widespread and well known for some time, the implications of that corruption on foreign companies doing business in Mexico became headline news when, on April 21, 2012, the New York Times broke the story that Wal-Mart de Mexico, Wal-Mart's largest foreign subsidiary, had allegedly paid more than \$24 million in bribes to Mexican officials.¹ Wal-Mart de Mexico made these corrupt payments in order to obtain expedited building permits.² The New York Times followed this article with another on December 17, 2012, this time alleging that Wal-Mart de Mexico bribed a Mexican official to change the zoning map so that it could build a store in an area that recently prohibited commercial development.³ The ongoing investigations that followed by the U.S. Congress, the U.S. Securities and Exchange Commission, and the U.S. Department of Justice cost Wal-Mart \$157 million in fiscal year 2013 for the ongoing probe into the allegations.⁴

Mexican President Enrique Peña Nieto, who took office on December 1, 2012, has indicated that his administration is dedicated to addressing the corruption perceived to be rampant in a country where bribery can be a part of daily life.⁵ Mr. Peña Nieto is currently leading a reform of the state oil monopoly Pemex, which has long been viewed as one of the most corrupt institutions in Mexico (a 2003 New York Times article notes that Pemex executives estimated that the company loses at least \$1 billion a year to corruption).⁶ Pemex has been referred to as the “Niagara Falls of corruption, it flows from everywhere and it's not new,”⁷ a “sewer of corruption,”⁸ and a “slush fund for politicians.”⁹

In December 2013, Mr. Peña Nieto worked with the ruling Institutional Revolutionary Party (PRI) and the opposition National Action Party (PAN) to pass a constitutional amendment dismantling Pemex's monopoly on oil production.¹⁰ While the oil reform may be viewed as a step toward transparency in the industry,¹¹ the proposed reform does not address Pemex's problem of corruption.¹² Moreover, the Peña Nieto administration is not investigating the Pemex workers union leader, Carlos Romero Deschamps, who, also in December 2013, was named by Forbes as one of “The 10 Most Corrupt Mexicans of 2013.”¹³ According to a recent poll, about 80 percent of Mexicans associate Pemex with corruption, in part because of Pemex's contracts with politically connected firms such as Oceanografía, whose investors are reported to include the

¹ <http://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html?pagewanted=all>

² *Id.*

³ http://www.nytimes.com/2012/12/18/business/walmart-bribes-teotihuacan.html?pagewanted=all&_r=0

⁴ <http://blogs.wsj.com/corruption-currents/2013/02/21/wal-mart-records-157-million-charge-for-mexican-bribery-probe/>

⁵ <http://www.insidecounsel.com/2012/11/28/mexicos-anti-corruption-law-targets-bribery-in-gov>

⁶ <http://www.nytimes.com/2003/01/21/world/corruption-and-waste-bleed-mexico-s-oil-lifeline.html?pagewanted=all&src=pm>

⁷ <http://www.forbes.com/sites/doliaestevez/2013/08/13/investors-unimpressed-with-mexican-president-pena-nietos-energy-reform/>

⁸ <http://www.smh.com.au/comment/obituaries/joaquin-hernandez-galicia-union-boss-created-a-sewer-of-corruption-20131115-2xlor.html>

⁹ <http://www.nytimes.com/2003/01/21/world/corruption-and-waste-bleed-mexico-s-oil-lifeline.html?pagewanted=all&src=pm>

¹⁰ http://www.washingtonpost.com/opinions/mexicos-oil-breakthrough-opens-the-door/2013/12/15/7f0393e6-6414-11e3-91b3-f2bb96304e34_story.html

¹¹ http://www.washingtonpost.com/opinions/mexicos-oil-breakthrough-opens-the-door/2013/12/15/7f0393e6-6414-11e3-91b3-f2bb96304e34_story.html

¹² <http://www.forbes.com/sites/doliaestevez/2013/08/13/investors-unimpressed-with-mexican-president-pena-nietos-energy-reform/>

¹³ <http://www.forbes.com/sites/doliaestevez/2013/12/16/the-10-most-corrupt-mexicans-of-2013/>

stepsons of Mexico's former president Vicente Fox.¹⁴ In May 2013, Pemex officials acknowledged that "serious" corruption exists in some areas of the company, and that contracting processes have been affected by "interference from organized crime."¹⁵

Organized crime, particularly related to the drug industry, plagues Mexico. Conservative estimates suggest that since 2006, at least 60,000 people have been killed in drug-related violence.¹⁶ A chief economist for the BBVA Spanish bank estimated that the violence in Mexico has prevented at least 1% of additional economic growth over recent years.¹⁷ A recent Global Integrity Report noted that "the most striking issue in Mexico is the extent to which the drug war has negatively influenced the country's anti-corruption and transparency efforts."¹⁸ In addition to the direct economic impact of the drug trade, investigations involving organized crime have also uncovered additional cases of political corruption. Over the weekend of January 18, 2014, the former head of Mexico's anti-money-laundering office was arrested on extortion charges.¹⁹

Recent legislative reforms demanding more accountability from state governments and public officials, in addition to freedom of information laws and an increasingly technologically engaged society, have been more successful at preventing questionable public finances from going unquestioned.²⁰ The recent enactment of legislation to create an independent anti-corruption agency has also demonstrated Mr. Peña Nieto's focus on combating corruption. These reforms expand upon the general anti-bribery provisions of the Federal Criminal Code.²¹ Although there has been more public focus on preventing and prohibiting corruption in Mexico, the legislative reforms, including the Federal Law Against Corruption in Public Procurement, are recent and have not yet been fully tested. While Mr. Peña Nieto and others have at least said the right things of late, it remains to be seen how powerful these tools will be in combating corruption in Mexico, and to what extent Mr. Peña Nieto and the Mexican government will actually use them in the fight.

FOREIGN INVESTMENT IN MEXICO

Mexico has become increasingly attractive to foreign investment. Its Global Competitiveness Ranking was 55 in the Global Economic Forum's 2014 Global Competitiveness Index, which measures country productivity and growth potential across 148 countries.²² Recent major investments in Mexico include:

- A \$691 million investment by General Motors Co. to expand manufacturing facilities in the centrally located states of Guanajuato, San Luis Potosí and Estado de México;
- A \$600 million project by Mondelez International Inc, the Illinois-based maker of Oreo cookies, to build the world's largest cookie factory in northern Nuevo León state;
- Vacation provider Apple Leisure Group will invest \$600 million in six tourist projects throughout the country; and
- A \$125 million plant for making LEGO Group toys in Nuevo León.²³

¹⁴ http://www.washingtonpost.com/world/the_americas/mexican-oil-workers-fear-pemex-proposal/2013/08/13/fb972286-044e-11e3-a07f-49ddc7417125_story.html

¹⁵ <http://www.globalpost.com/dispatch/news/agencia-efe/130517/mexican-daily-pemex-admits-serious-corruption>

¹⁶ <http://www.bbc.co.uk/news/world-latin-america-10681249>

¹⁷ <http://www.bbc.co.uk/news/business-13120598>

¹⁸ <http://www.globalintegrity.org/files/GIR2011.pdf>

¹⁹ <http://online.wsj.com/news/articles/SB10001424052702303947904579336901003343292>

²⁰ http://www.nytimes.com/2013/06/24/world/americas/official-corruption-in-mexico-once-rarely-exposed-is-starting-to-come-to-light.html?pagewanted=all&_r=1&

²¹ https://www.mapi.net/system/files/PA-110_0.pdf

²² http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

Because of these projects and others like them, Mexico's Finance and Public Credit Secretariat forecasted a record amount of foreign direct investment in 2013, from \$35 billion to \$40 billion up from 2012.²⁴

Since 2000, the U.S. has been the leading foreign investor in Mexico, providing nearly half of the foreign direct investment.²⁵ The Netherlands (14%), Spain (13.8%), and Canada (4.4 percent) follow.²⁶ A majority (60%) of the foreign direct investment into Mexico is focused on manufacturing, with approximately 18% of the foreign direct investment focused on commercial operations, including retail.²⁷ The Global Economic Forum noted in its 2013-2014 report that Mexico's future competitiveness depends largely on future actions toward anti-corruption (for which Mexico ranked 99th in the 2013-2014 index) and increasing security (for which Mexico ranked 135th).²⁸ The Global Economic Forum ranked "corruption" as the most problematic factor for doing business in Mexico.²⁹ The results of the Global Economic Forum's Executive Opinion survey regarding irregular payments and bribes ranked Mexico at 88th, between Azerbaijan (87th) and Swaziland (89th).³⁰

THE SIZE OF THE CORRUPTION PROBLEM

Transparency International, the non-governmental organization dedicated to eliminating corruption, publishes an annual Corruption Perception Index, which measures the perceived levels of public sector corruption in 176 countries and territories. For 2012, Mexico ranked 105th on the list, earning the same score as countries such as Algeria, Armenia, Bolivia, Gabmia, Kosovo, Mali, and the Philippines.³¹

According to Transparency International's Global Corruption Barometer, 33 percent of Mexicans surveyed reported having paid a bribe to 1 of 8 services, including the police, judiciary, registry, land, medical, educational, tax, and utilities services.³² Mexicans ranked the political parties as a 4.6 on a corruption scale of 1 to 5, where 1 means not at all corrupt and 5 means extremely corrupt.³³ Those surveyed similarly ranked the police as 4.6, and public officials/civil servants measured a 4.5.³⁴ Sixty-two percent of Mexicans surveyed responded that the country's government is run by a few big interests looking out for themselves to a "large extent" or "entirely."³⁵ Eighty to one hundred percent of Mexicans believe that "ordinary people can make a difference in the fight against corruption."³⁶ The majority of Mexicans surveyed believed that corruption had increased over the last two years.³⁷

²³ <http://www.ibtimes.com/mexico-forecasts-record-foreign-direct-investment-2013-35b-40b-way-2012-1336409>

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

²⁹ http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf, at p. 276.

³⁰ http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf, at p. 430.

³¹ See *Corruption Perceptions Index 2012 Results*, Transparency International, available online at <http://cpi.transparency.org/cpi2012/results/>.

³² *Global Corruption Barometer 2013*, Transparency International, Appendix C, Table 1, available online at <http://www.transparency.org/gcb2013/report/>

³³ *Id.* at Table 2

³⁴ *Id.*

³⁵ *Id.* at page 15

³⁶ *Id.* at page 21

³⁷ *Id.* at page 7

The 2010 KPMG report on Fraud in Mexico, a survey conducted among 286 companies operating in Mexico, estimates that \$1.4 billion was lost in Mexico's private sector to internal fraud in 2010 alone, up from \$900 million in 2008.³⁸ Fifty-two percent of companies surveyed perceive a major risk of suffering from fraud in the next twelve months, up from 13% reported in 2008.³⁹ The KPMG report indicates that approximately eight out of ten companies operating in Mexico have suffered at least one instance of fraud in the prior twelve months.⁴⁰ KPMG's corresponding survey from 2008 demonstrates that 44% of the companies surveyed paid bribes to public officials, most often at the municipal level (33%).⁴¹ These bribes account for an average of 5% of affected companies' annual revenues.⁴²

FOREIGN TREATIES

Mexico is a signatory to three main international anti-corruption conventions: the Organization of American States ("OAS") Inter-American Convention Against Corruption ("ICAC"), the Organization for Economic Co-operation and Development's ("OECD") Anti-Bribery Convention, and the United Nations Convention Against Corruption.^{43, 44}

In 1996, the Organization of American States adopted the ICAC, the first international anti-corruption legal agreement. Mexico ratified the ICAC in 1997.⁴⁵ The ICAC requires signatories to establish judicial and policy procedures to prevent, detect, sanction, and eradicate corruption.⁴⁶

The OECD Convention outlines government and business obligations to adopt and implement anti-corruption policies focused on prevention and detection of bribery of foreign public officials in international business transactions. Mexico ratified the OECD Convention in 1999, two years after its adoption.⁴⁷

Mexico signed the United Nations Convention against Corruption four years later in 2003. The multilateral treaty establishes jointly agreed standards for international cooperation in the fight against corruption. The treaty also simplifies the procedures and processes for the prosecution of transnational corruption investigations, adopting provisions regarding mutual legal assistance.⁴⁸

CURRENT ENFORCEMENT REGIME

I. THE FEDERAL CRIMINAL CODE

Mexico's Federal Criminal Code ("FCC") prohibits attempted corruption, active and passive bribery, extortion, bribing a foreign public official, abuse of office, influence peddling, embezzlement, and money

³⁸ http://www.kpmg.com/MX/es/IssuesAndInsights/ArticlesPublications/Documents/Estudios/Encuesta_fraude_en_Mexico_2010.pdf

³⁹ http://www.kpmg.com/MX/es/IssuesAndInsights/ArticlesPublications/Documents/Estudios/Encuesta_fraude_en_Mexico_2010.pdf, at p. 7.

⁴⁰ http://www.kpmg.com/MX/es/IssuesAndInsights/ArticlesPublications/Documents/Estudios/Encuesta_fraude_en_Mexico_2010.pdf, at p. 11.

⁴¹ <http://www.kpmg.com/MX/es/IssuesAndInsights/ArticlesPublications/Documents/DE2008/reporteFRAUDE.pdf>, at p. 23.

⁴² *Id.*

⁴³ <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

⁴⁴ https://www.mapi.net/system/files/PA-110_0.pdf

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

laundering.⁴⁹ Specifically, the FCC provides that it is a criminal offense for any person to deliberately offer, promise, or give money or other type of gift, for the purpose of obtaining or retaining undue advantage in the development or carrying on of an international business transaction.⁵⁰ Violations of the anti-bribery provisions of the FCC include penalties of imprisonment, fines, and dismissal of the public official.⁵¹ The FCC has general jurisdictional limitations such that any violation committed outside Mexico by a Mexican against a Mexican or a foreigner will only be prosecuted if the violator is within Mexican territory or the crime has an effect in Mexico, the violator has not been tried in the country in which the crime occurred, and the crime is considered a crime both in Mexico and the foreign country.⁵²

II. OTHER ANTI-FRAUD LAWS

The Federal Law of Administrative Accountability of Public Officials and the Federal Law of the Accountability of Public Officials both also prohibit bribery of public officials.⁵³ The former applies general anti-bribery standards to all federal public officials, while the latter applies anti-bribery standards to the governors of the states of the federation, as well as other local officials.⁵⁴

In October 2012, former President Calderon signed the Anti-Money Laundering Law, which requires Designated Non-Financial Businesses & Professions (DNFBP) to identify their clients and report suspicious operations or transactions to the Secretariat of Finance (SHCP).⁵⁵ The Anti-Money Laundering Law also establishes a Specialised Financial Analysis Unit (UEAF) in the Office of the Attorney General (PGR), and it restricts cash operations in Mexican pesos, foreign currencies and precious metals for a variety of “vulnerable” activities as well as provides criminal sanctions and administrative fines for violators.⁵⁶

III. THE FEDERAL LAW AGAINST CORRUPTION IN PUBLIC PROCUREMENT

Mexico’s Federal Law Against Corruption in Public Procurement (the “Anti-Corruption Law”) took effect on June 12, 2012, and it is analogous in many respects to the U.S. Foreign Corrupt Practices Act. The Anti-Corruption Law holds individuals and companies accountable for offering money or gifts to obtain or maintain a business advantage in the procurement of public contracts with the Mexican government. Further, the Anti-Corruption Law mirrors the extraterritorial application of the FCPA by prohibiting any such actions by Mexican entities or individuals with respect to foreign (non-Mexican) authorities and public officials, whether directly or indirectly.

The law applies broadly to Mexican and non-Mexican companies and individuals engaged in federal government contracting in Mexico, including bidders, participants in tenders, request for proposal recipients, suppliers, contractors, permit holders, concessionaires and their shareholders, and agents. The acts and omissions prohibited by the Anti-Corruption Law include, but are not limited to, the following:

⁴⁹ https://www.mapi.net/system/files/PA-110_0.pdf

⁵⁰ https://www.mapi.net/system/files/PA-110_0.pdf

⁵¹ https://www.mapi.net/system/files/PA-110_0.pdf

⁵² https://www.mapi.net/system/files/PA-110_0.pdf

⁵³ https://www.mapi.net/system/files/PA-110_0.pdf

⁵⁴ https://www.mapi.net/system/files/PA-110_0.pdf

⁵⁵ <http://www.business-anti-corruption.com/country-profiles/the-americas/mexico/initiatives/public-anti-corruption-initiatives.aspx>

⁵⁶ <http://www.business-anti-corruption.com/country-profiles/the-americas/mexico/initiatives/public-anti-corruption-initiatives.aspx>

- Promising, offering, or delivering money or gifts to a public official or a third party—regardless of whether the money or gift is accepted—so that the public official will either act or refrain from acting in his or her official capacity, in order to obtain or maintain an advantage in procuring public contracts
- Engaging in acts or omissions with the purpose or effect of participating in federal public contracting when prohibited from participating under the law or relevant regulations
- Engaging in acts or omissions with the purpose or effect of evading the rules or requirements established in federal contracting procedures
- Bribery of non-Mexican government officials.

The Anti-Corruption Law sets forth a two-tiered procedure for enforcement, handled primarily by the Ministry of Public Administration (Secretaría de la Función Pública or the Ministry). The first tier is an investigation phase, during which enforcement authorities can request confidential information in a short turnaround of five to 10 days. The second tier is an administrative proceeding.

Violators are subject to heavy administrative sanctions, including the imposition of significant monetary fines and the prohibition of future participation in federal procurement contracts for up to a decade. Fines are calculated relative to the daily minimum wage for Mexico City but range from roughly \$5,000 to \$250,000 for domestic or foreign individuals and \$50,000 to \$10 million for domestic or foreign companies. Unlike the FCPA, the Anti-Corruption Law does not provide for the disgorgement of profits. However, the maximum fine may be increased by up to 50% if the benefit obtained by the illegal conduct exceeds the maximum fine.

Offenders may also be prohibited from future participation in government contracting—up to eight years for individuals and 10 years for companies. Notably, fines may be reduced by up to 70% for offenders who self-report violations to Mexican authorities. Reports indicate that there is “no significant indication that people have been appropriately sanctioned” under the new procurement law, suggesting a lack of enforcement.⁵⁷ The lack of actions brought under the new law is consistent with Transparency International’s classification of Mexico as a country with “little or no enforcement.”⁵⁸

On December 13, 2013, the Mexican Senate approved a bill to establish an anti-corruption authority that would investigate political graft.⁵⁹ The lower chamber of the Mexican Congress recently approved the bill, which is now in the hands of President Peña Nieto.⁶⁰ The draft bill tasks the Federal Institute for Access to Public Information (IFAI), with overseeing public transparency and government accounting for federal, state and municipal institutions. The IFAI will also be able to publish information held by the executive, legislative and judicial entities, as well as, importantly, political parties and trade unions. The IFAI will be an independent agency with the authority to make final resolutions and binding decisions, except in the case of national security.⁶¹

⁵⁷ <http://whoswholegal.com/news/community/article/31093/>

⁵⁸ <http://www.business-anti-corruption.com/country-profiles/the-americas/mexico/initiatives/public-anti-corruption-initiatives.aspx>

⁵⁹ <http://www.reuters.com/article/2013/12/14/us-mexico-reforms-idUSBRE9BD01U20131214>

⁶⁰ <http://www.mondaq.com/x/283912/data+protection/Mexican+Transparency+Bill+To+Put+An+End+To+Government+Corruption>

⁶¹ *Id.*

IV. THE TRANSPARENCY ACT

Mexico's access to information law, the Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, was signed into law on June 10, 2002. Dubbed "the most unambiguous achievement in the area of human rights during the Fox presidency,"⁶² the law enables reporters and citizens to petition the government for information on public affairs, helping interested parties obtain documents revealing misbehavior. Alongside reporters, there are an increasing number of watchdog and other civil society groups in Mexico pushing for transparency.⁶³ Mexico's transparency law was a major step forward in the country's democratic transition, and it continues to play a vital role in fighting corruption and forcing increased government openness and accountability.⁶⁴

RECENT MAJOR SCANDALS

Two thousand and thirteen marked another year of corruption scandals for public figures and politicians in Mexico. In February 2013, Elba Esther Gordillo, the former leader of the teacher's union, was charged with embezzling \$200 million from union funds to pay for, among other things, her Hermes bags, plastic surgeries, and various million-dollar residences.⁶⁵ In July 2013, Mexicans were outraged when a judge exonerated Raúl Salinas de Gortari, the brother of former president Carlos Salinas de Gortari, of the final "unlawful enrichment" charge pending against him and ordered \$19 million dollars deposited in Gortari's bank accounts as well as 41 properties be returned to him. Gortari had previously been convicted of political homicide, but was acquitted in 2005.⁶⁶ Gortari's exoneration was viewed as another example of the political elite's abuse of power.

A number of recent scandals have emerged involving the governors of Mexican states. Multiple governors -- including those from the states of Tabasco, Coahuila, Aguascalientes, Tamaulipas, Baja California Sur, Chiapas, and Quintana Roo -- have been implicated in allegations involving missing public funds (reaching the hundreds of millions of dollars), collaboration with drug traffickers, murder, and money laundering.⁶⁷

The former governor of Tabasco, Mr. Andrés Granier, was arraigned in June 2013 on suspicion of embezzlement and improper exercise of public service.⁶⁸ A tape recording of Mr. Granier was leaked in which he described making extravagant purchases, and his successor discovered about \$190 million in unaccounted-for state funds.⁶⁹ His treasurer, José Manuel Saiz, had already been arrested the same month on suspicion of embezzlement as he tried to cross the border into the United States. Saiz aroused suspicion after boxes containing nearly \$7 million in unexplained cash were discovered on a property linked to him.⁷⁰

⁶² <http://www.freedominfo.org/regions/latin-america/mexico/mexico2/>

⁶³ http://www.huffingtonpost.com/shannon-k-oneil/corruption-in-mexico_b_3616670.html

⁶⁴ <http://www.freedominfo.org/regions/latin-america/mexico/mexico2/>

⁶⁵ <http://www.forbes.com/sites/doliaestevez/2013/12/16/the-10-most-corrupt-mexicans-of-2013/>

⁶⁶ *Id.*

⁶⁷ http://www.huffingtonpost.com/shannon-k-oneil/corruption-in-mexico_b_3616670.html

⁶⁸ http://www.nytimes.com/2013/06/24/world/americas/official-corruption-in-mexico-once-rarely-exposed-is-starting-to-come-to-light.html?pagewanted=all&_r=1&

⁶⁹ *Id.*

⁷⁰ *Id.*

The former governor of the state of Aguascalientes, Luis Armando Reynoso, is being investigated over improper exercise of public service, news organizations have reported.⁷¹ Last year, Mario Ernesto Villanueva Madrid, the former governor of the state of Quintana Roo who was extradited to the United States in 2010, pled guilty to conspiring to launder millions of dollars in bribes he received from the powerful Juárez drug organization to ensure that its cocaine moved safely through his state, undisturbed by law enforcement.⁷²

Citigroup and Banamex

On February 28, 2014, Citigroup announced that it planned to restate its 2013 earnings after discovering \$400 million in bad loans made to its Mexican subsidiary Banamex.⁷³ Citigroup reported that Oceanografía, a Mexican oil services company, fraudulently obtained credit from Banamex using invoices that falsified amounts owed to Oceanografía by the Mexican state-owned oil company Pemex.⁷⁴ By March 3rd, news outlets confirmed that law enforcement from the Mexican Attorney General's Office, the U.S. Federal Bureau of Investigation, and the U.S. Securities and Exchange Commission were investigating the allegations.⁷⁵ While the SEC is looking into whether Citigroup engaged in accounting fraud and possible FCPA violations⁷⁶, a U.S. federal grand jury recently announced a probe into Citigroup and Banamex's compliance with the U.S. Bank Secrecy Act and regulations on money laundering⁷⁷—nearly a year after the U.S. Federal Reserve demanded improvement in Citigroup's anti-money laundering procedures and related internal audits.⁷⁸

Oceanografía is currently being run by Mexico's finance ministry.⁷⁹ The Mexican government took control on the heels of Citigroup's announcements in order to preserve records and maintain operations during the investigations.⁸⁰ Enforcement activity in this case is ongoing.

RECENT ENFORCEMENT ACTIONS

Stryker Corporation

On October 24, 2013, the SEC charged Stryker Corporation with violations of the FCPA involving bribery of doctors, health care professionals, and other government-employed officials by subsidiaries located in five different countries, including Mexico.⁸¹ The SEC found during its investigation that Stryker subsidiaries in Argentina, Greece, Mexico, Poland, and Romania made illicit payments totaling approximately \$2.2 million that were incorrectly described as legitimate business expenses in the company's books and records.⁸² The illicit payments were included in the books and records as charitable donations, consulting services, travel

⁷¹ *Id.*

⁷² *Id.*

⁷³ <http://online.wsj.com/news/articles/SB10001424052702304071004579410863489379726?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304071004579410863489379726.html>

⁷⁴ *Id.*

⁷⁵ <http://www.reuters.com/assets/print?aid=USBREA2213720140303>

⁷⁶ <http://www.bloomberg.com/news/print/2014-03-02/mexico-said-to-question-citigroup-workers-in-oceanografia-probe.html>

⁷⁷ <http://www.reuters.com/assets/print?aid=USBREA2213720140303>

⁷⁸ <http://online.wsj.com/news/articles/SB10001424052702304071004579410863489379726?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304071004579410863489379726.html>

⁷⁹ <http://www.bloomberg.com/news/print/2014-03-02/mexico-said-to-question-citigroup-workers-in-oceanografia-probe.html>

⁸⁰ <http://online.wsj.com/news/articles/SB10001424052702304071004579410863489379726?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304071004579410863489379726.html>

⁸¹ <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540044262#.UuQBpSc8Kc0>

⁸² *Id.*

expenses, and sales commissions.⁸³ The SEC noted that Stryker’s misconduct involved “hundreds of improper payments over a number of years” and that the company failed to implement the proper internal controls.⁸⁴

In Mexico, the Stryker subsidiary directed a law firm to pay approximately \$46,000 to a Mexican government official in order to win a contract that resulted in \$1.1 million in profits to Stryker.⁸⁵ The Mexican subsidiary then reimbursed the law firm for the bribe and described the payment as a legitimate legal expense on its books, despite the fact that no legal services were provided and the law firm merely served as a channel for the illicit payment.⁸⁶ Stryker made approximately \$7.5 million in profits as a result of the illicit payments, and the company agreed to pay more than \$13.2 million to settle the SEC’s charges.⁸⁷

Orthofix International

According to the complaint filed by the U.S. Securities and Exchange Commission, Orthofix paid over \$300,000 in bribes to Mexican officials in order to obtain lucrative sales contracts with government hospitals.⁸⁸ These payments were made through Orthofix’s Mexican subsidiary, Promeca, and were referred to as “chocolates.”⁸⁹ The bribery scheme lasted from 2003 to 2010, and it yielded nearly \$5 million in illegal profits for Promeca.⁹⁰ Payments were made to Mexican officials in the form of cash, laptop computers, televisions, and appliances that were provided directly or indirectly through front companies that the officials owned.⁹¹ Orthofix agreed to pay \$5.2 million to settle the SEC’s charges, brought on July 10, 2012, and to pay \$2.22 million to the U.S. Department of Justice in a related action.⁹²

Tyson Foods

According to the SEC complaint, Tyson Foods made illicit payments totaling \$100,311 to two Mexican government veterinarians responsible for certifying its Mexican subsidiary’s chicken products for export sales.⁹³ The SEC alleged that Tyson attempted to hide the payments by adding the veterinarians’ wives to its payroll.⁹⁴ The SEC further alleged that Tyson Foods officials waited two years after first learning about the illicit payments to order that the payments stop.⁹⁵ Tyson admitted that employees at subsidiaries made improper payments to government-employed veterinarians who inspected two chicken processing plants located in Gomez Palacio, Mexico.⁹⁶ The bribes were made for the purpose of preventing the veterinarian-inspectors from disrupting the operations of the meat-production facilities.⁹⁷ Tyson agreed to pay more than \$5 million to settle the SEC’s charges, filed on February 10, 2011, and to resolve the related DOJ criminal

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171483164>

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ <http://www.sec.gov/news/press/2011/2011-42.htm>

⁹⁴ *Id.*

⁹⁵ www.fcablog.com/blog/2011/2/10/tyson-foods-pays-52-million-to-resolve-mexico-bribe-charges.html

⁹⁶ *Id.*

⁹⁷ *Id.*

proceedings.⁹⁸ The fines included a \$4 million criminal penalty, and \$1.2 million in disgorgement and pre-judgment interest.⁹⁹

ABB Ltd.

According to the SEC complaint, filed on September 29, 2010, ABB Ltd. used subsidiaries to pay bribes to Mexican officials to obtain business with government- owned power companies.¹⁰⁰ “This investigation uncovered millions of dollars in bribes paid or promised to officials at Mexico’s largest power company,” said Scott W. Friestad, Associate Director of the SEC’s Division of Enforcement.¹⁰¹ ABB agreed to pay more than 39.3 million to settle the SEC’s charges and \$19 million in criminal penalties.¹⁰² The SEC’s complaint alleged that from 1999 to 2004, ABB Network Management (“ABB NM”) — a business unit within ABB’s U.S. subsidiary— bribed officials in Mexico to obtain and to retain business with two Mexican government-owned electric utilities, Comision Federal de Electricidad (CFE) and Luz y Fuerza del Centro (LyFZ).¹⁰³ The bribes were funneled through an agent and two other companies in Mexico. The SEC also alleged that ABB failed to conduct due diligence on these payments and entities and improperly recorded the bribes on its books as payments for commissions and services on projects in Mexico.¹⁰⁴

The illicit payments included checks and wire transfers to relatives of CFE officials, cash bribes to CFE officials, and a Mediterranean cruise vacation for CFE officials and their wives.¹⁰⁵ As a result of this bribery scheme, ABB NM was awarded contracts with CFE and LyFZ that generated more than \$90 million in revenues and \$13 million in profits for ABB.¹⁰⁶

CONCLUSION

Recent legislative developments and statements made by President Peña Nieto may suggest that the government is ready to crack down on the corruption prevalent in so many sectors of the Mexican economy. Whether the Mexican government will find ways to effectively implement solutions to the nation’s corruption problems is unclear, but heightened scrutiny by government regulators seems likely and may increase the risks of doing business in Mexico. Companies doing business and planning to do business in Mexico should adopt and distribute clear, stand-alone anti-corruption policies, implementing broad training programs and developing internal whistleblower hotlines and other monitoring mechanisms for their Mexican operations to combat these risks going forward.

⁹⁸ <http://www.sec.gov/news/press/2011/2011-42.htm>

⁹⁹ www.fcpablog.com/blog/2011/2/10/tyson-foods-pays-52-million-to-resolve-mexico-bribe-charges.html

¹⁰⁰ <http://www.sec.gov/news/press/2010/2010-175.htm>

¹⁰¹ <http://www.sec.gov/news/press/2010/2010-175.htm>

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*