Behind the *Pantalla*: Common Corruption Risks in Mexico

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As William Finnegan wrote recently in an illuminating New Yorker article, "in Mexico, it is often impossible to know who is behind something." This is an important reminder for FCPA compliance officers. It is often a challenge to know what is going on in your foreign operations. Due diligence, trainings, audits, and risk assessments are vital.

This is particularly relevant in Mexico. On one hand, U.S. companies find Mexico to be an attractive place to do business. The country is our neighbor. Its market is vast. NAFTA has intimately linked the two economies such that Mexico represents the United States's second largest export market and its third largest source of imports. Mexico also feels familiar – Mexican culture has permeated the United States, and vice versa.

But, in FCPA compliance, it is important not to let familiarity, warm people, and great culture mask what might be happening behind the *pantalla* – the screens and illusions that can hide true decision-makers and bad actors. Mexico is a high-risk corruption environment, one of the highest.

Look at the New York Times bombshell report on Wal-Mart's alleged widespread bribery schemes in Mexico. Consider the steady stream of FCPA enforcement actions for bribes paid there; the country is the largest source of FCPA enforcement actions in Latin America. The 2012 Latin American Corruption Survey found Mexico to be one of the four most corrupt countries in the region.

To help navigate these threats, I have prepared a list of five common corruption risks in Mexico. They are pulled from the cases, survey data, and my own experiences there.

The Police. Respondents to the 2012 Latin American Corruption Survey perceived significant corruption among the police in Mexico more than they did among the police in all other countries surveyed. Based on personal experience, these numbers ring true. I worked with an insurance company confronting local police who steal and impound company cars and then demand bribes to release them. I have dealt with executives of a manufacturing company whose employees in Mexico are extorted by policemen who show false official documents at traffic stops and demand bribes to avoid imprisonment. Companies doing business in Mexico should develop plans for reacting to such corruption, and should provide employees likely to receive such demands with training and resources.

Security/Extortion. Mexico has several security problems ranging from kidnapping by criminals to extortion by government officials. There is no statutory exception or defense under the FCPA for duress or extortion. But the legislative history suggests that such situations are not subject to the FCPA's anti-bribery provisions. This is because, if an individual makes a payment based on extortion, that individual lacks the corrupt intent necessary to satisfy the offense. However, based on the NATCO enforcement action, it appears that the books and records and internal controls provisions still apply to these transactions. Thus, if your employees are forced to pay bribes under duress or through extortion, you must ensure that those payments are correctly recorded in your books. Your company should also take precautionary steps to avoid such situations in the future. Companies might even want to obtain opinions from local anti-corruption lawyers that describe the actual security risks involved in their work. How can the employee know that the Mexican policeman is really a policeman? What are the risks that the officer will wrongfully detain the employee and apply trumped-up charges if a payment is not made? These are real possibilities to consider before they happen.

Large-Scale Procurements. FCPA enforcement actions like Orthofix, BizJet, and Bridgestone highlight the risks inherent in Mexican procurement processes. The Mexican market is large, and so are government procurements. When large dollars (or pesos) are at stake, corruption is more likely to occur. Procurement processes also present unique forms of corruption, as described more fully here. Companies participating in large procurements should take special precautions, such as implementing heightened internal controls and targeted training.

Politically-Linked Companies: Mexico's elite is relatively small and is dominated by powerful families that frequently have members involved in business and some in politics. These close relationships can blur the lines between public and private activity, creating public corruption risk. For example, a politician from a family that owns a bank might require business with his family's bank as the payoff for an official action. Know the party with whom you are dealing.

Opaque Regulations: As FCPAméricas has previously stated, poor regulatory quality results in high corruption risk. Regulations for everything from construction to taxation can be dense in Mexico. The World Bank puts the country in the bottom quartile worldwide for regulatory quality for getting electricity and registering property. The Wal-Mart allegations suggest a pattern of bribery at the local level, where poor quality regulations are often enforced. Local lawyers can help untangle rules to understand which payment requests are legitimate and which ones are not. Your company's consistent commitment to compliance can send a steady message to regulators that it is unwilling to participate in bribery.

Promising developments over the last year suggest that slow improvement in the corruption risk environment might be underway. In October 2011, the OECD Anti-Bribery Convention's Working Group issued a stern report on the country's reluctance to meet its treaty commitments, described by FCPAméricas in its post "The Mañana Syndrome?" Then, on July 11th, the Mexican Congress did what few thought was possible. It passed a powerful new public procurement anti-corruption law. Though some in Mexico incorrectly describe the law as the "Mexican FCPA," the law still brings Mexico closer to fulfilling its OECD obligations by increasing sanctions in an area where most public corruption occurs. These are hopeful trends to watch.