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# Anti-Corruption Committee News

Newsletter of the International Bar Association Legal Practice Division

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# 11th Annual IBA Anti-Corruption Conference

12–13 June 2013

OECD Conference Centre, Paris, France

A conference presented by the IBA Anti-Corruption Committee, supported by the Organisation for Economic Co-operation and Development (OECD)

## Topics include:

- Update on developments in asset recovery in corruption
- Latest trends in investigations and prosecutions: Q&A with law enforcement officials
- Can we talk about this: voluntary disclosure, settlement and plea bargaining in anti-bribery cases
- Media and civil society in the fight against corruption: between denunciation and defamation
- Spotlight on the defence industry: bribes, offsets and national security

- Unsustainable behaviour: bribery in the natural resources sector
- Guidances for anti-bribery compliance – help or hindrance?
- Recent developments in the international anti-corruption architecture – roundtable with international organisations

## Who should attend?

Private practitioners, in-house counsel, compliance officers, auditors, law enforcement officials and representatives

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**Contributions** to this newsletter are always welcome and should be sent to the Communications Officer, Leopoldo Pagotto, at [leopoldo.pagotto@veirano.com.br](mailto:leopoldo.pagotto@veirano.com.br).

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MEXICO

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# Mexico: an involuntary (or voluntary?) impasse in anti-corruption efforts

**M**exico has not had a very good reputation regarding corruption for many years. Maybe our proximity to the United States obliges the observer to immediately compare the apparent order and discipline of America to the informal, and sometimes ‘unorthodox’, way to do things in Mexico.

Certainly I can tell that we Mexicans sometimes cannot believe how far corruption can go, but most of all I am often surprised by how many national and foreign companies keep on not only accepting, but promoting, doing business in a muddy, non-transparent way in this country.

Cases like Wal-Mart and Siemens are mere examples of very prestigious companies that are recognised and respected but have a kind of double moral as part of their agenda. The issue seems simple: growing is not easy, but growing by cheating is easier.

In the case of national companies, since most are not regulated by stock exchanges or other norms, being involved in corruption not only makes life easier but it is a way to subsist in an aggressive business environment.

This panorama gets worse today for national and international companies since the US slowdown and the European economic crisis are making business actors desperately look for business opportunities in Latin America, and Mexico has been seen in the last few months as the new business site.

So what is the status of anti-corruption in Mexico regarding laws that companies will face?

In July 2012, a new Anti-Corruption in Public Procurement Law was issued. This law was made to sanction businesses that incur into the conducts considered as corruption in public works, purchase of goods, rendering of services, public private partnerships, concessions, etc. This law is relevant since the most important client in Mexico is still the federal government and the sometimes foggy relationship between government officials and vendors, suppliers

and contractors, is the main origin of corruption.

Nevertheless, in December 2012, a new law ordered the disappearance of the Ministry of Public Function (the authority in charge of punishing companies and businesses that incur into the corruption punished by the law as well as punishing public officials), ordering the creation of an Anti-Corruption Commission.

The current problem is that as this contribution is being written, the Anti-Corruption Commission has not been created and although the Ministry of Public Function has not disappeared and is still working, users (citizens) cannot rely on a half-alive, half-dead authority, a situation that makes citizens not too hopeful that things will change dramatically once the new Anti-Corruption Commission has been created.

Therefore, until this Anti-Corruption Commission is created, I have no doubt that many criminals will take a chance to ‘bypass’ the law and the system, which is scary and may result in damages to Mexico as a nation and to the market.

On the other side of the story, from the criminal law side, although the crimes of bribery, extortion, traffic of influence, etc, are considered in most of the criminal codes (each of the 31 states and the federal district), such crimes, from the people’s perception, are rarely punished and therefore there is a sense of impunity, so using the natural legal mechanisms against corruption is not really an option.

Therefore, we can say that although there is an apparent clear agenda against corruption, in practice it seems that today citizens are more vulnerable and there are less mechanisms against corruption since we have a new Anti-Corruption Law, a dying authority, but great expectations which are yet to be realised.

I sincerely hope that Mexico soon establishes clarity to allow for the absolute punishment of all those who do business

against the law. If this situation is not resolved soon, the perception of corruption in our country, and maybe the reality itself, will show how negative results and consequences in a time full of business expectations can be detrimental to the country. And after a long period of not being part of the top countries

for doing business, it is important that Mexico gets its new law into action soon.

**Note**

\* Roberto Hernández-García is the Latin American Chair of the IBA Anti-Corruption Committee and Chair of the Anti-Corruption Committee of ICC Mexico.

## MEXICO

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# Mexican update

**T**here have been a number of key legislative developments aimed at reducing public corruption in Mexico. On 12 June 2012, Mexico's Ley Federal Anticorrupción en Contrataciones Públicas (Federal Law Against Corruption in Public Contracting) came into effect, which is designed to fill the gaps in Mexico's anti-corruption legal framework to outlaw bribery of domestic and foreign government officials in public procurement. The new law makes it illegal for any individual or company engaged in federal government contracting in Mexico to directly or indirectly offer money or gifts to a public official to obtain or maintain a business advantage in procurement. The law also outlaws other dishonest contracting practices, including evading federal contracting rules or requirements and participating in tenders in which an entity is not legally entitled to participate. Violators face heavy sanctions under the new law, including administrative fines of up to approximately US\$10m and debarment or suspension from participation in government contracts for up to ten years. Violators, however, that self-report their misconduct and cooperate with Mexican authorities may receive lesser penalties, including up to a

70 per cent reduction of the amount of the fine. Mexico's new President, Enrique Peña Nieto, has made the fight against corruption a public goal of his administration. His first legislative proposal is the creation of a National Anti-Corruption Commission which is empowered to investigate corruption and prosecute government officials at all levels of government. The jurisdiction of the current body charged with investigating public corruption is limited to bribery of federal officials.

Furthermore, the significant number of US FCPA enforcement actions involving Mexican government entities, and the increasingly close cooperation between Mexican and US regulators in pursuing corruption, has resulted in a growing number of domestic corruption investigations in Mexico. For example, after the US Department of Justice announced an FCPA settlement with BizJet International Sales and Support Inc, a US aircraft maintenance provider, for authorising the payment of hundreds of thousands of dollars to Mexican and Panamanian government officials to secure aircraft service contracts, Mexico's Attorney-General launched his own anti-corruption investigation into Bizjet and the Mexican officials alleged to have accepted bribes in that matter.