



FCPA and Anti-Corruption in Latin America

May 2011

FCPA Enforcement

"FCPA enforcement is stronger than it's ever been— and getting stronger. We are in a new era of FCPA enforcement; and we are here to stay."

~ Assistant Attorney General Lanny A. Breuer



FCPA Enforcement Trends

- Increase in FCPA Enforcement Actions

	<u>2010</u>	<u>2009</u>
DOJ	48	26
SEC	26	14

- Resurgence of Large Corporate Cases/Many Non-U.S. Companies
 - DOJ charged 28 companies
 - SEC charged 19 companies
 - \$1.7 Billion in Penalties (6 cases account for 80%)
- 150 Ongoing DOJ FCPA Investigations

FCPA Enforcement Trends

- Continued High Visibility Enforcement Actions Against Individuals
- Greater Transparency in Granting Credit for Voluntary Cooperation
- Decrease in the Number of Mandatory Corporate Monitors
- U.K. Anti-Bribery Act
- Enactment of Dodd-Frank Whistleblower Provisions
- Sector-wide Investigations
 - Oil and Gas
 - Pharmaceuticals
 - Energy
 - Banking



FCPA Enforcement Trends in Latin America

- Increasingly US Enforcement Actions Have Focused on Foreign Corporations
- Approximately 80 FCPA Enforcement Actions Involving Latin America to Date
- Majority of these Cases Have Arisen in Mexico, Brazil, Venezuela and Argentina
- Recent Significant Enforcement Actions Have Arisen Out of Haiti and Panama
- Affected Industries Have Included
 - Energy
 - Telecom
 - Agriculture
 - Infrastructure



TRACE International Corruption Perceptions Index 2010 - AMERICAS

Corruption is
"Serious Problem"
in 20 Latin
American
countries

<u>RANK</u>	<u>REGIONAL RANK</u>	<u>COUNTRY/ TERRITORY</u>	<u>CPI 2010 SCORE</u>
6	1	Canada	8.9
17	2	Barbados	7.8
21	3	Chile	7.2
22	4	United States	7.1
24	5	Uruguay	6.9
33	6	Puerto Rico	5.8
41	7	Costa Rica	5.3
44	8	Dominica	5.2
69	9	Brazil	3.7
69	9	Cuba	3.7
73	11	El Salvador	3.6
73	11	Panama	3.6
73	11	Trinidad & Tobago	3.6
78	14	Colombia	3.5
78	14	Peru	3.5
87	16	Jamaica	3.3
91	17	Guatemala	3.2
98	18	Mexico	3.1
101	19	Dominican Republic	3.0
105	20	Argentina	2.9
110	21	Bolivia	2.8
116	22	Guyana	2.7
127	23	Ecuador	2.5
127	23	Nicaragua	2.5
134	25	Honduras	2.4
146	26	Haiti	2.2
146	26	Paraguay	2.2
164	28	Venezuela	2.0

Corruption is
considered
"rampant" in 9
Latin American
countries



2010 FCPA Enforcement Actions Involving Latin America

- Ports Engineering Consultants (“PECC”) – multiple prosecutions of individuals for bribes paid to Panamanian government officials to secure a maritime contract
- Telecommunications D’Haiti – multiple prosecutions of individuals for bribes paid by U.S. telecommunications companies to foreign officials of the Republic of Haiti state-owned national telecommunications company
- ABB Ltd – subsidiary of Swiss corporation paid bribes of \$1.9 million to officials at the Comisión Federal de Electricidad (“CFE”), a Mexican state owned utility company to help secure contracts worth \$81 million



2010 FCPA Enforcement Actions Involving Latin America

- Lindsey Manufacturing – defendants charged with paying bribes to Mexican government officials at the CFE
- Pride International – paid bribes to officials in Venezuela and Mexico to extend contracts, secure a favorable judicial decision and avoid the payment of customs duties
- Panalpina – paid bribes to foreign officials in Brazil on behalf of customers to obtain customs clearance
- Latin Node – two former executives of company alleged to have paid bribes to government officials in Honduras to retain a telecommunications contract and to receive a rate adjustment
- Alcatel-Lucent – bribes paid to win business in Costa Rica and Honduras

High FCPA Risk Areas in Latin America

- Minimal Local Enforcement of Anti-Corruption Laws
- Custom Officials/Visa Officials
- Family Members of Government Officials
- Legal and Judicial
- Government Monopolies
- State and Municipal Public Works
- Public Bidding Issues
- Organizational Vulnerability



Steps to Mitigate FCPA Risk

- Development of an Effective FCPA Compliance Policy, Development Procedures and Rollout
- Risk Assessment, Control Development and Implementation
- Policy and Control Monitoring, Remediation and Risk Reevaluation



Elements of an Effective Compliance Policy

- Written standards and procedures to prevent and detect criminal conduct
- Knowledge by the corporation's board about the content and operation of the program and the exercise of reasonable oversight with respect to its implementation and effectiveness and designation of a high-level person with overall responsibility for the compliance program



Elements of an Effective Compliance Policy

- Designation of a specific individual with day-to-day responsibility for the compliance program who has access to and regularly reports to the Organization's governing authority and who is provided adequate resources, authority and access to carry out his role
- Reasonable steps to communicate the program's standards and procedures throughout the organization, and tailored training



Elements of an Effective Compliance Policy

- Reasonable steps to ensure that the corporation's compliance program is followed, including monitoring and auditing to detect criminal conduct, periodically evaluating the program's effectiveness, and publicizing a system that allows reporting or the receipt of guidance about potential and actual criminal conduct without fear of retaliation
- Consistent promotion and enforcement of the program with appropriate incentives for proper performance and appropriate disciplinary measures for those who engage in criminal conduct or fail to take reasonable steps to prevent or detect it



Elements of an Effective Compliance Policy

- Reasonable steps to respond appropriately to criminal conduct when detected, and to prevent further similar criminal conduct, including any needed changes to the program



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