For US Employers Operating in Mexico, Anti-Corruption Compliance Now is a Multi-Jurisdictional Obligation

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For several decades, US employers operating in Mexico (or anywhere else around the globe, for that matter) have been subject to – and, therefore, should be aware of – the tenets of the federal Foreign Corrupt Practices Act (15 U.S.C. §78dd-1, *et seq.*) ("FCPA"). However, as of July 2017, US employers operating in Mexico must also be wary of the requirements of Mexico's new anti-corruption legislation, the National Anti-Corruption System (the Sistema Nacional de Anti-Corrupción) ("NAS"), which coupled with the FCPA creates a multi-jurisdictional anti-corruption obligation for US businesses operating in Mexico. For those unfamiliar with the FCPA or the NAS, here is a brief primer on both laws.

Enacted in 1977, in an effort to stem the tide of illegal payments from US companies to foreign government officials, politicians, and political parties, the FCPA contains two broad provisions relating to anti-bribery and accounting. The anti-bribery provision makes it a federal crime for any US individual, business entity or employee of a US business entity to offer or provide, directly or through a third party, anything of value to a foreign government official with corrupt intent to influence an award or continuation of business, or to otherwise gain an unfair advantage. The accounting provision works in tandem with the anti-corruption provision and makes it illegal for a company that reports to the Securities and Exchange Commission ("SEC") (i.e., a publicly traded company) to have false or inaccurate books or records or to fail to maintain a system of internal accounting controls. In other words, the accounting provisions serves as a method to investigate and confirm a publicly traded company's compliance with the anti-corruption provision.

Moreover, in recent years, the US government has aggressively – and successfully – sought to enforce the FCPA. Indeed, in just the last ten years, the SEC and Department of Justice ("DOJ"), both of whom are tasked with enforcing the FCPA have secured hundreds of millions of dollars in fines, penalties, and settlements surrounding violations of the FCPA by US companies operating around the globe.

As if the foregoing risk was not reason enough for employers to implement anti-corruption policies and practices, for US employers operating in Mexico the stakes are now even higher. Indeed, on July 19, 2017, Mexico enacted the NAS, which provides for the establishment of a National Anti-Corruption Prosecutor, establishes federal audit authority over all levels of state and local government, and creates corporate and individual liability. The risks to US employers under the

NAS include monetary damages, sanctions of up to two times the amount of the benefits acquired by virtue of the corrupt practice, loss of ability to participate in governmental business, debarment of up to 10 years, suspension of activities up to three years, and compulsory partnership dissolution.

Accordingly, although the NAS is relatively new, and implementation and enforcement efforts are just beginning, US employers operating in Mexico should take steps to implement and manage anti-corruption policies and procedures that co-extensively insulate from liability under the FCPA and the NAS. To this end, the attorneys of Fisher Phillips' International Employment Practices Group will continue to monitor the implementation and enforcement of the NAS, and are available to discuss anti-corruption best-practices from a global perspective.

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