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CONFERENCE OF ANTI-CORRUPTION AND INVESTIGATIONS

Latin Lawyer anti-corruption & investigations conference: The emerging web of anti-corruption laws

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Once the only piece of anti-corruption legislation to have serious clout globally, the US's FCPA is now being matched by an emerging web of laws, the impact of which on doing business in Latin America was discussed at Latin Lawyer's inaugural Anti-corruption & Investigations Conference, held last week in São Paulo.



Conference co-chair Shin Jae Kim of TozziniFreire Advogados led a discussion about the development of anti-corruption legislation in Latin American countries as well as the FCPA and the UK Bribery Act.

While anti-corruption statutes often borrow elements from one another and draw heavily on the Organisation for Economic Cooperation and Development (OECD) guidelines, there are significant differences to be found between each country's statutes and their enforcement. After Chile's accession to the OECD, the country passed a foreign corruption statute in 2009 that saw it modify its criminal code. Marcos Rios, partner at Carey, said that under the country's anti-corruption laws, legal entities can be held criminally liable in specific circumstances, something which Rios

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described as “very unique for civil law countries”. He also stressed that companies that have implemented a strong compliance programme will be in a stronger position.

Jonathan Adams of Baker & McKenzie LLP raised the topic of the Walmart bribery scandal in Mexico, which has been making headlines for some time. So far, any enforcement relating to the scandal has been carried outside the country and Adams is uncertain whether or not Mexico itself will take action. Mexico enacted its own anti-corruption law soon after the scandal, a piece of legislation Adams described as "a bit disappointing", but with a lot of potential. Among its limitations are the fact that it only applies to government procurement and only provides for administrative sanctions. “People have been thinking this is an overarching anti-corruption law in Mexico, but actually it is quite limited,” he said, adding that there is a lack of transparency in Mexico’s criminal system. That said, he added he does feel the law represents a step forward for the country: for the first time, companies will face direct sanctions for violations in their involvement with government officials in transactions and in government procurement settings. Adams noted that while bribery has been illegal in Mexico since 1931, “enforcement and convictions were very few and far between”, and said that the new administrative law has a very good chance of having a positive effect, because people in the business world are aware of the law and are taking it seriously. That said, “Things have been rather quiet on the anti-corruption front”, which Adams attributes to the more immediate and sweeping reforms in the country’s tax and energy laws. Once those are worked out completely he expects the anti-corruption law to receive more attention.

Brazil’s much-discussed Clean Company Law comes into force in January, but it is still unclear how it will be enforced as the main regulator Controladoria-Geral da União (CGU) is currently finalising the regulation that will guide the new law, and more information is expected in the coming weeks according to CGU secretary Sergio Seabra, who also spoke at the event. TozziniFreire's Jae Kim expressed the hope that this will include explanations about how the CGU will evaluate corporate compliance policies, as well as what level of corporate hospitality will be allowed, especially in light of the upcoming World Cup and Olympic Games. She also noted the absence of real protection for individuals - which makes it harder for whistle blowers to come forward - as well as a lack of clarity on which the enforcing authorities will be, as some of the main topics of

concern among the business community.

Benito Romano of Freshfields Bruckhaus Deringer LLP provided the audience with a brief overview of the UKBA and FCPA's main provisions, where, he said, the incentive for strong compliance programmes is built into both acts, as companies may receive credit for the disclosure of any violations. He looked at the decision of whether or not to self-report and warned that the US Department of Justice has still imposed serious fines on companies that did self-report, and added that the UK's Serious Fraud Office "has cautioned that there is no guarantee a prosecution won't follow after self-reporting". He said the US authorities will continue their strict enforcement of the law and added that he expects to see more international cooperation going forward. He also mentioned the possible move to allow deferred prosecution agreements under the UKBA as a development to watch closely.

Panel members, which also included Mastercard GC Paulo Pinotti, discussed their views of what the coming year will bring, highlighting that the greater visibility and public awareness of the existing laws should make it easier for companies to prevent any violations.

Latin Lawyer will report on its anti-corruption & investigations conference throughout the week.