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Construction in Latin America — A View Beyond Corruption Scandals

Corruption scandals, investigations and prosecutions involving the construction industry in Latin America in the last few years have been widely reported. There is no shortage of information and opinions about what happened and who was involved. Similarly, there is no shortage of opinions on whether corruption in parts of Latin America is a permanent problem or one that can be fixed. The story is still being written and it will be some time before the scandals, investigations, prosecutions and political fallout subside and return to more "normal" levels.

These scandals have resulted in historically high fines against companies engaged in corruption, jail sentences for their executives, forced resignations, jail sentences and tragically even the suicide of one former president. While the frenzy of these corruption scandals continues, the development and construction of important infrastructure projects continue in most countries in Latin America, including in places impacted by corruption scandals. There is heightened awareness among government procurement officials, construction, politicians and the press, but there are also many that believe that corruption is "part of life" and that little can be done to stop it. Prospective foreign project participants must, therefore, weigh the anticipated gains, economic and otherwise, from taking advantage of such opportunities, against the risks of working in locations in Latin America where corruption has been shown to exist and where the opportunity to work without engaging in corruption is challenging.

How should a foreign company go about this risk analysis? In this era of unlimited information, how do we filter pure scandal and political noise from relevant information? What should foreign companies that want to avoid corruption know about current events and applicable laws, rules and local business customs, and what should they bring when they come to work in Latin America?

- Understanding a country's response to corruption scandals is an important part of the due diligence business evaluation and should include being well-informed about:
- Local, U.S. and other international laws, rules and regulations relating to corruption, at an industry-specific level;
- Legitimacy of corruption prosecutions—this can be tricky because of the thickness of the political smoke, and
- The degree to which a free press exists, to safeguard the legitimacy of the legal process.

For many companies, their own national laws regarding involvement in corruption overseas make getting caught up in corruption scandals outweigh acceptable risk thresholds. As a result, they will not pursue those opportunities. This loss of foreign project participants is a high price to pay to the citizens of a corrupt industry as local economies lose investments, knowledge, technology transfers and opportunities for progress. Without doubt, others are not so quick to give up on the region despite the corruption scandals, either believing that they can somehow avoid engagement in corruption, avoid getting caught or buy their way out of trouble with further corrupt acts.

Thus, there is the important question facing all these foreign companies: it is possible to operate in specific countries in Latin America without engaging in corruption even if corruption remains a significant aspect of doing business in that particular country? The answer is “yes,” but with an explanation about “what to pack for the trip.”

First, the company must conduct a serious corruption assessment, learn how projects are pursued, contracted and built locally. This analysis requires “boots on the ground” and monitoring published materials about corruption in that jurisdiction. Engagement of reputable local lawyers familiar with the country’s laws and practices is a good start. Going in with open eyes allows the company to recognize when corruption is the only way to do business and to pass on that opportunity.

Second, the company must have a commitment (including a zero tolerance policy) toward engaging in corruption. This commitment has to come from top management and be communicated to every employee at all levels so that the company has a culture of compliance. The company must make it clear to its employees that it does not want any help by engaging in prohibited acts, and that it is willing to walk away from an opportunity if the only way to benefit from it is to engage in corruption.

Third, the company must have a robust compliance program that includes mandatory training of every employee (local and expats).

Fourth, the company must assure that employees may report concerns about corruption in the company in a way that does not place them at risk of retaliation. Establishment of a “hotline” monitored by a third-party vendor where even anonymous reports of actions violating policy or law may be made safely to those in the company who monitor and enforce the company’s anti-corruption policies is an effective strategy.

Business opportunities in Latin America will continue to attract foreign participants. Foreign companies considering the risks and benefits of working in a country impacted by corruption should be well-informed and guided in order to make proper risk and investment decisions and must commit not to succumb to corrupt local practices even if widely accepted. They must do so because it is the right thing to do for society and because it is the smart thing to do for their company’s survival.

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