



Recent U.S. Enforcement Trends Impacting Mexico

Maria-Leticia Ossa Daza | William J. Stellmach | Jay Martin; Willkie Farr & Gallagher LLP
Gabriel Calvillo | Enrique Ramírez; Mijares, Angoitia, Cortés y Fuentes, S.C.

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Speakers

Maria-Leticia Ossa Daza, Willkie

Maria Leticia is a partner at Willkie in the Corporate & Financial Services Department, focusing on general corporate and securities matters, and head of the firm's Latin American Practice.



Bill Stellmach, Willkie

Bill is a partner at Willkie and co-head of Willkie's White Collar Defense Group. Before joining Willkie Bill was the Chief of the Fraud Section of the United States Department of Justice's Criminal Division. As Chief of the Fraud Section Bill supervised all of the DOJ's major corporate prosecutions, including all FCPA investigations and prosecutions.



Jay Martin, Willkie

Jay is a senior counsel in the Litigation Department and the Compliance, Investigations & Enforcement Practice Group. Before joining Willkie, Jay was the Associate General Counsel and Chief Compliance Officer at global oilfield services providers Baker Hughes and Baker Hughes, a GE company



Speakers

Gabriel Calvillo, Mijares

Gabriel is a senior counsel at Mijares and focuses his practice on compliance, corporate criminal liability, white collar crimes and environmental litigation. His experience comes from the practice of criminal law, both private and public sectors.



Enrique Ramírez, Mijares

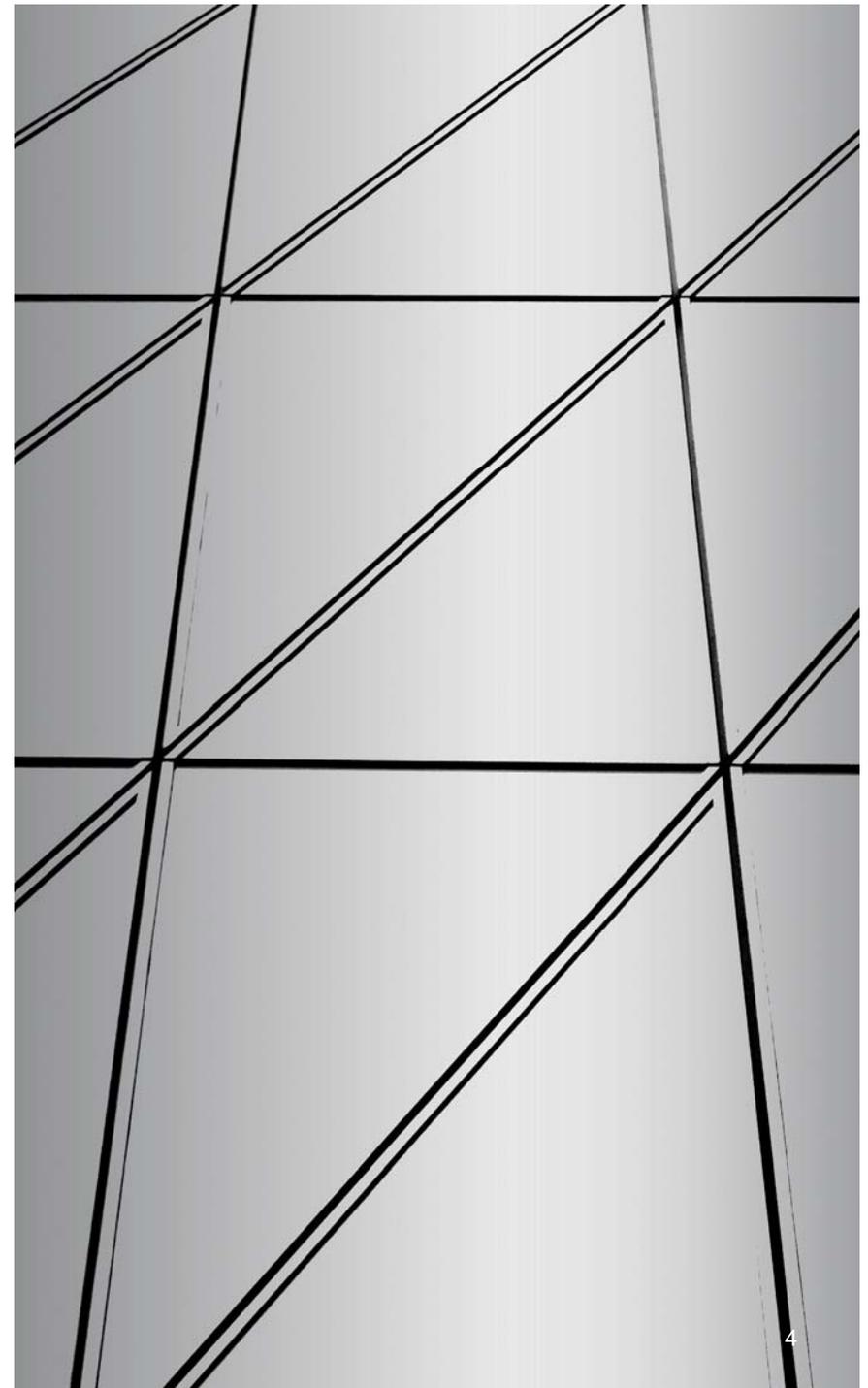
Enrique is a partner with more than 30 years of experience in tax practice, with a focus on consulting, controversy and litigation. He has represented the largest companies in the country in negotiating agreements and resolving all kinds of disputes with the tax administration. He has also advised clients against procedures involving several of the largest tax settlements issued in Mexico.



Enrique is president of the Mexican Chapter of the International Fiscal Association (IFA).

Presentation Summary

- I. FCPA and U.S. Jurisdictional Reach
 - II. United States-Mexico-Canada Agreement
 - III. Current Trends and Developments
 - IV. Managing COVID-19 Challenges and Best Practices
 - V. Q&A
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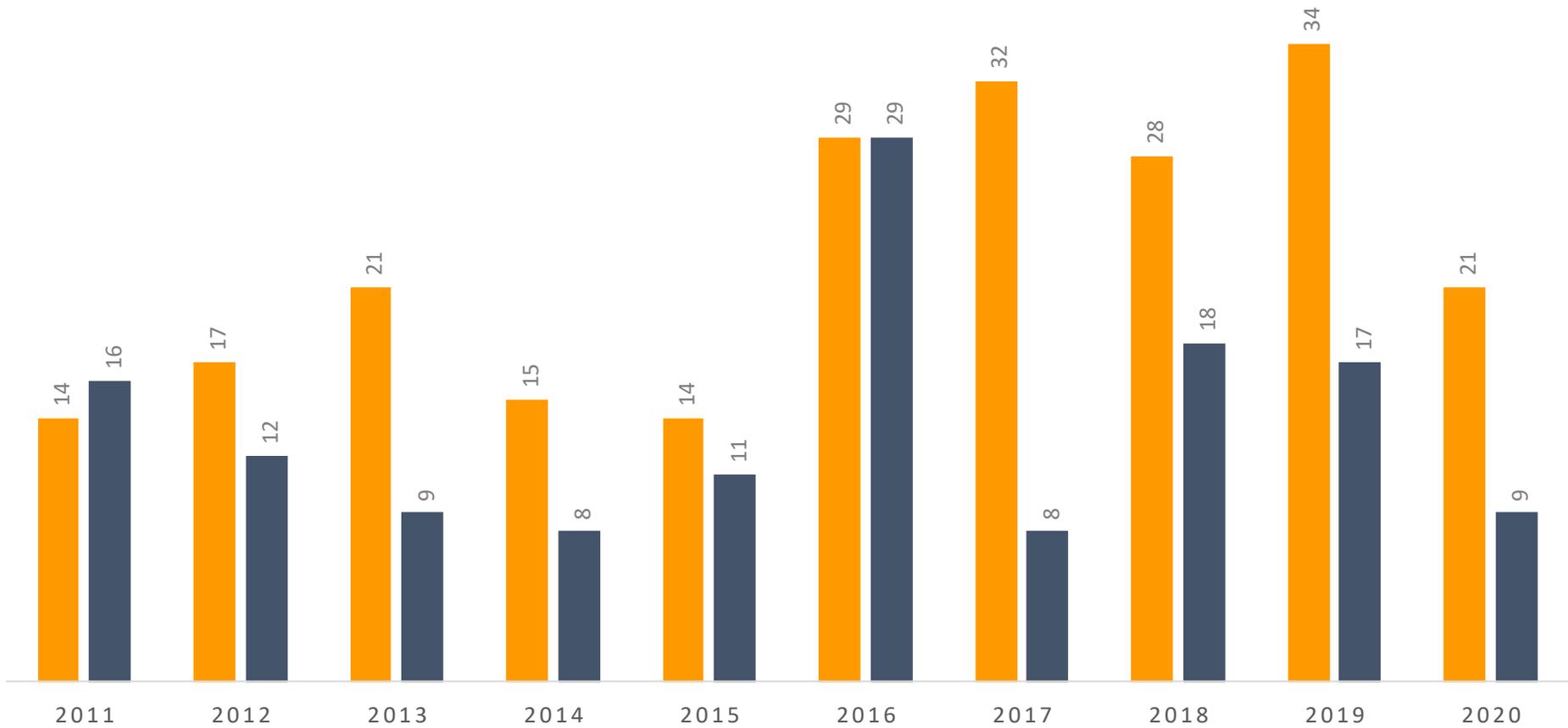


Compliance Risks and Recent Trends

I. FCPA and U.S. Extraterritorial Reach

FCPA Enforcement Actions

■ DOJ Actions ■ SEC Actions



Top Ten Enforcement Actions

Entity Group	Monetary Sanctions USD
Odebrecht S.A.	\$3.55 Billion
The Goldman Sachs Group, Inc.	\$2.61 Billion
Airbus SE	\$2.09 Billion
Petroleo Brasileiro S.A. – Petrobras	\$1.78 Billion
Telefonaktiebolaget LM Ericsson	\$1.06 Billion
Telia Company AB	\$965 Million
Mobile Telesystems Public Joint Stock Company	\$850 Million
Siemens Aktiengesellschaft	\$800 Million
VimpelCom Ltd	\$795 Million
Alstom S.A.	\$772 Million

*All of the above are foreign companies

*Sanctions paid to foreign governments pursuant to global resolutions are excluded from this analysis

Impact of COVID-19?

Enforcement actions have not slowed down due to the pandemic, a list of post-March actions:

Company	Date	Amount
Eni S.p.A. (SEC only)	April 17, 2020	\$24.5M
Novartis AG & Alcon Pte. Ltd.	June 25, 2020	\$346.7M
Alexion Pharmaceuticals, Inc.	July 2, 2020	\$21.5M
World Acceptance Corporation	August 6, 2020	\$21.7M
Herbalife Nutrition Ltd.	August 28, 2020	\$123M
Sargeant Marine Inc.	September 22, 2020	\$16.6M
J&F Investimentos, S.A., et al.	October 14, 2020	\$27.9M
Beam Suntory Inc.	October 21, 2020	\$19.5M
The Goldman Sachs Group, Inc.	October 22, 2020	\$1.6B

Statutory Overview

- Enforcement



- One Statute, Two Lines of Attack:

- Anti-Bribery.
- Books and Records.

- International Coordination

Anti-Bribery Provision

- Prohibits giving anything of value to a foreign official in order to secure any improper advantage in order to “obtain or retain business.”
 - Key Elements:
 - What is giving
 - Gift, offer, promise, or authorization to give
 - What is “anything of value”
 - Can include cars, jewelry, travel and entertainment expenses, promises of future employment
 - Who is a foreign official
 - Can include employees of state-owned enterprises

Parent and Joint Venture Liability

- Agency Theory
- Joint Ventures
- PE Risk for Portfolio Companies

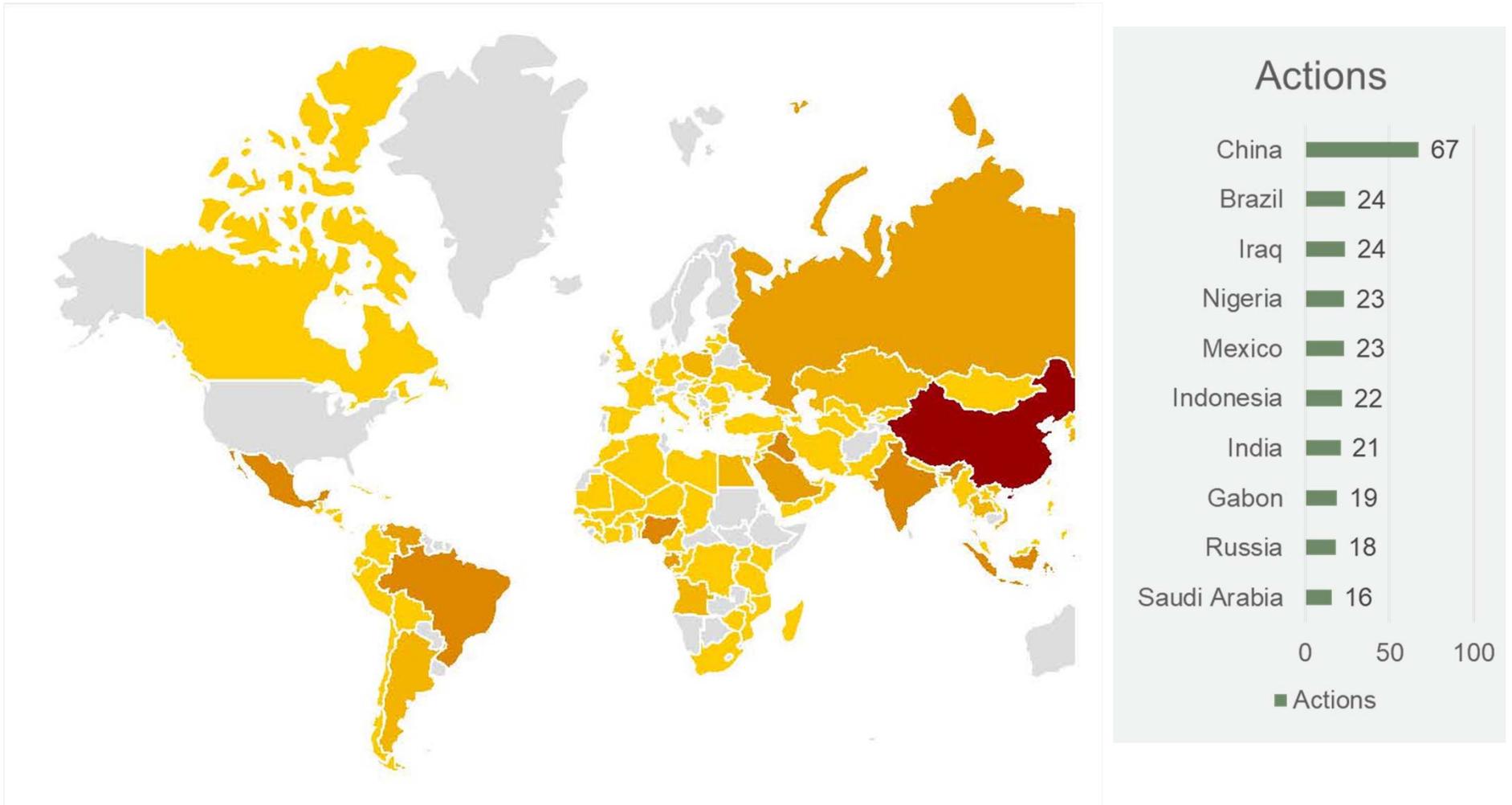


FCPA and Its Global Reach

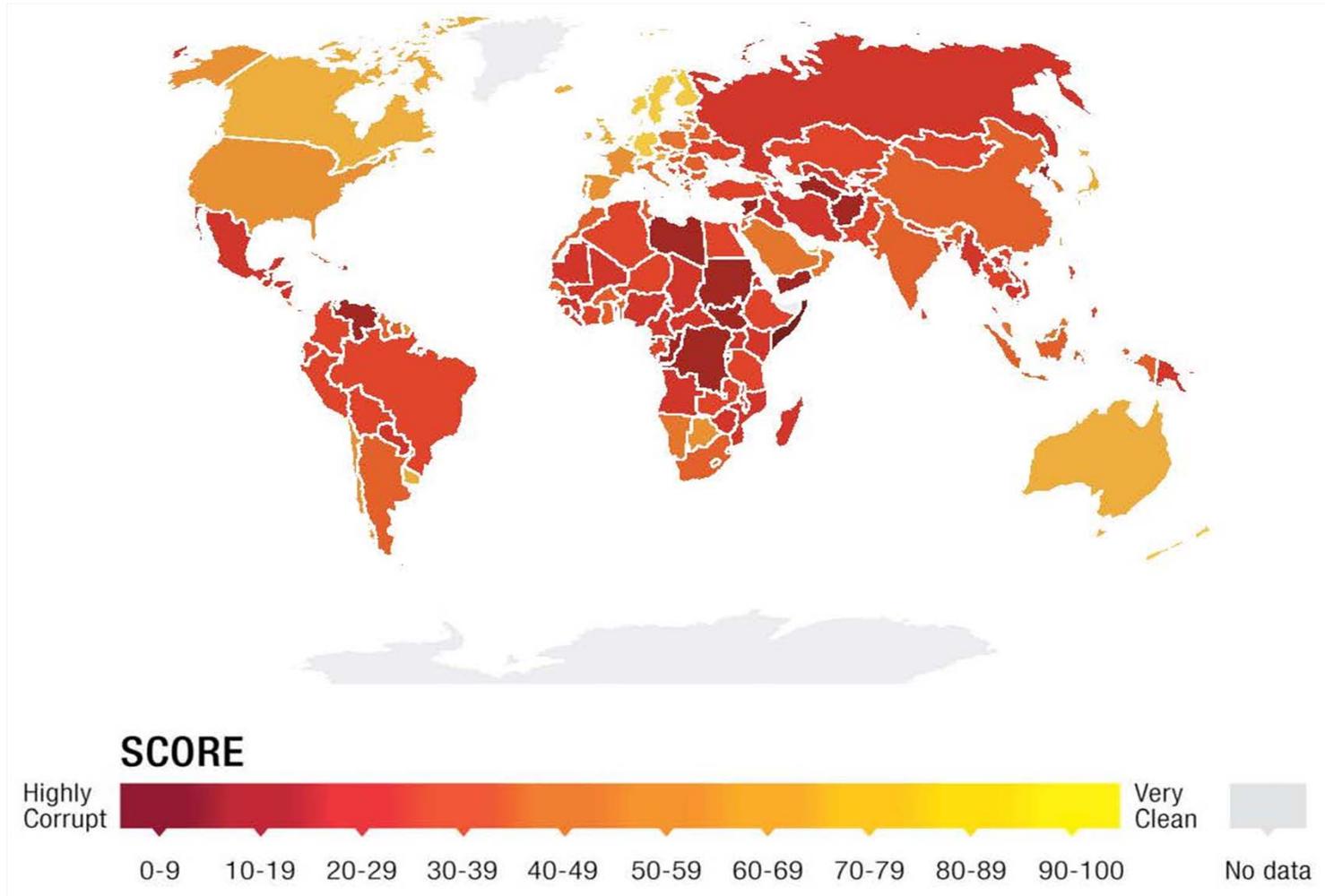
- Applies to foreign entities who trade U.S. securities when:
 - “use ... the mails or any means or instrumentality of interstate commerce” “in furtherance of” a foreign bribe offense. 15 U.S.C. 78dd-1(a), 78dd-2(a)
- Applies to foreign entities who:
 - “Corruptly ... make use of the mails or any means or instrumentality of interstate commerce”, or if they “commit any other act in furtherance of” a corrupt payment, “while in the territory of the United States.” Id. 78dd-3(a)
- Examples:
 - Fresenius case
 - JGC Corp Case
 - Telefonica case



Location of Misconduct Alleged in FCPA-Related Enforcement Actions (by Country)



Transparency Global Map



Relevant Case Study



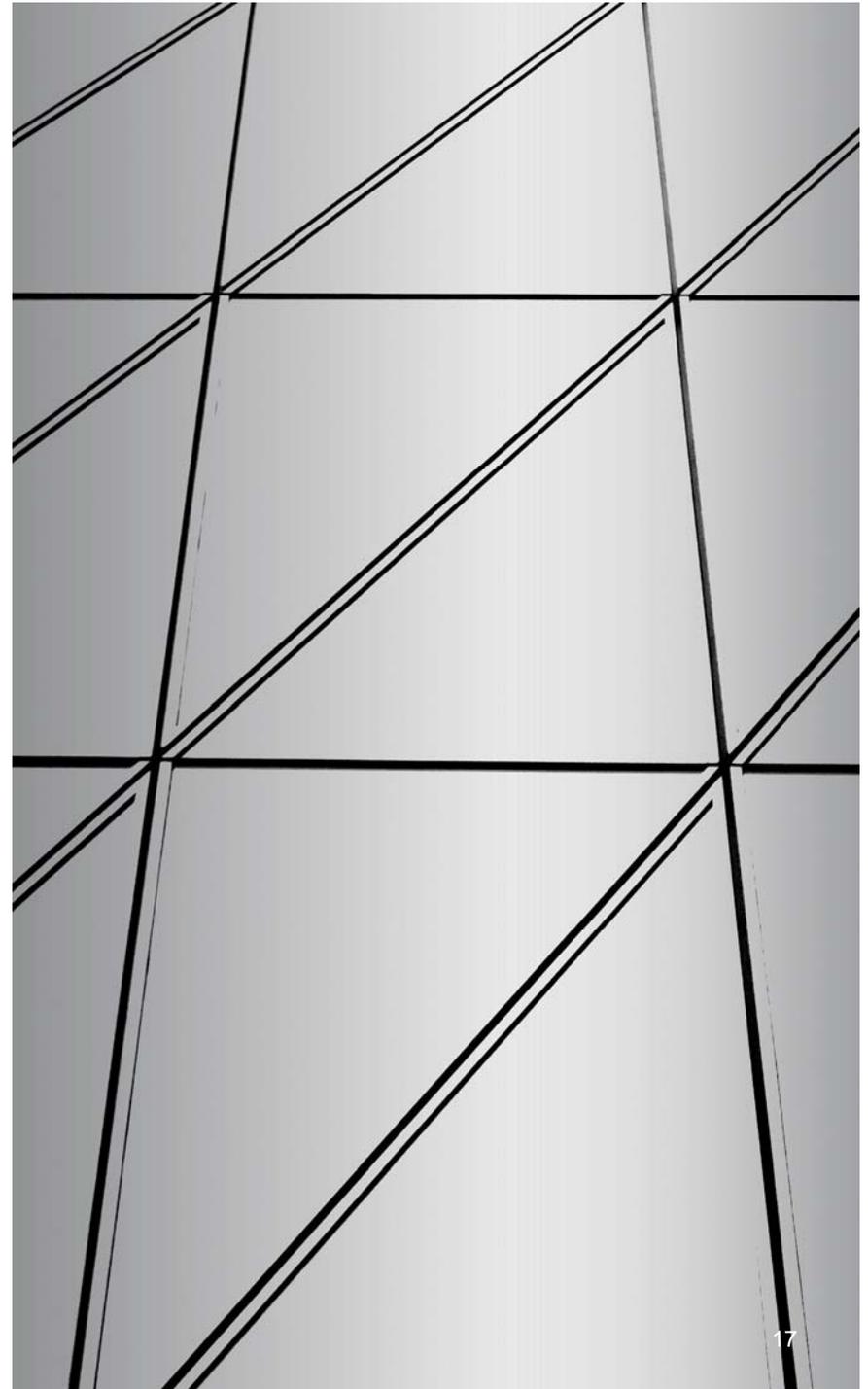
Case Study - Key Takeaways

- Low Threshold for U.S. Jurisdiction
- Coordinated enforcement actions with foreign authorities
- Outsized Penalties
- Individuals Charged Criminally



Case Study - Key Takeaways Cont.

- The new role of Mexico's Financial Intelligence Unit in anticorruption and enforcement.
- The accusations drive Mexico into uncharted territory, no former Mexican president has faced corruption charges or been sent to jail.
- What this case represents for compliance in Mexico.



II. United States-Mexico-Canada Agreement (USMCA)

USMCA – Anti-corruption Provisions

- The USMCA chapter on anti-corruption, includes legislative, administrative and promotional anti-corruption measures.
- Similar measures to the FCPA and Canadian Corruption of Foreign Public Officials Act.
 - Mexico must change its federal laws to implement the provisions in order to back up its treaty obligations.

USMCA – Anti-corruption Provisions Cont.

- Some of the measures require countries to:
 - Legislatively criminalize:
 - bribery of national or foreign public officials;
 - soliciting or acceptance of a bribe as public official;
 - embezzlement, misappropriation, or another diversion by a public official of property entrusted to the public official; among others.
 - Implement and promote:
 - sound accounting and auditing standards;
 - protections for whistleblowers;
 - procedures for removing public officials;
 - strengthen cooperation and coordination among anti-corruption law enforcement agencies.

USMCA – Environmental Compliance

- The USMCA's chapter on environmental compliance requires to maintain levels of environmental protection and governance, including an agreement to enforce environmental laws and promote transparency and public participation.
- It is considered to be the most comprehensive set of enforceable environmental obligations of any previous United States agreement.
 - This chapter lacks provisions related to climate change or renewable energy.
- The chapter requires the implementation of several obligations contained under seven multilateral environmental agreements as well as to robust and modernized mechanisms for public participation and environmental cooperation.

Compliance Risks and Recent Trends

III. Current Trends and Development

Recent Guidance on Compliance Programs

- 2019 DOJ Guidance on Compliance Programs (updated June 2020)
- No rigid formula for effectiveness.
- Analyzed based on certain fundamental questions:
 - *Is the corporation's Compliance Program well designed?*
 - *Is the Program being applied earnestly and in good faith?*
 - *Does the corporation's Compliance Program work?*
- Additionally there is the updated FCPA resource guide released by the DOJ and SEC July 2020.

DOJ 2019 Guidelines – Key Themes

- The DOJ 2019 Guidance highlighted a few key important themes:
 - Risk Assessment
 - Compliance Personnel
 - Third Parties
 - Compliance Culture
 - Retention of business records
 - Including personal communication and messaging platforms used to convey business communications
- Risk assessment of the types of communications and messaging platforms for the company's operations

DOJ 2020 Update to the Guidelines

- **June 2020 Update:**

- The second “fundamental question” changed from “is the program implemented effectively” to “is the program **adequately resourced** and empowered to function effectively”
- Programs should be dynamic, and updated to fit new circumstances
- Compliance function adequately resourced/compensated
- It highlights “third-party risk” as a key topic
 - *How the compliance program identifies it and deals with it?*
 - *Does the company engage in risk management of third parties throughout the lifespan of the relationship, or primarily during the onboarding process?*

DOJ 2020 Update to the Guidelines, Cont.

- The publication of the 2020 FCPA Guide follows closely after the DOJ released a revised “Evaluation of Corporate Compliance Programs” (“ECCP”)
- Both reflect a continued emphasis on devoting resources to compliance
- The issuance of the revised FCPA Guide and the revised ECCP during the pandemic is not an accident – the message:
- *Even (and perhaps especially) in times like these, compliance should not be compromised*

DOJ 2020 Guidelines – Key Themes

- Companies should consider the following in light of the June 2020 Update:
 - Emphasis on no one-size-fits-all.
 - Ensure compliance function has the necessary resources.
 - Compliance program adapts to fit the companies' needs.
 - Compliance program must have a robust auditing and testing element.

Recent Amendments to the Tax Criminal Law in Mexico

- Since 2019, tax fraud is considered as a type of organized crime
 - Prison without parole during the trial
 - Seizure of assets

- Criminal Responsibility
 - Corporation
 - Dissolution
 - Board members
 - High-ranked officers

Tax Authorities' Position

- Pressure to reach a settlement to avoid potential criminal tax fraud charges
- Fomento Económico Mexicano
 - \$401 million
- América Móvil
 - \$380 million
- Walmart
 - \$370 million
- Minera Fresnillo
 - \$210 million
- BBVA
 - \$152 million



Tax Compliance and Tax-Criminal Compliance Program Minimum standards

- Internal Tax-Criminal Compliance Committee
- Policy to prevent tax fraud and tax crimes
- Tax-Criminal Assessment
- Tax compliance and Tax-Criminal Compliance Manual to rule the actions of the Tax-Criminal Compliance Committee.
- Design and Development of the principles to prevent tax fraud and tax crimes.

Compliance Risks and Recent Trends

IV. Managing COVID-19 Challenges and Best Practices

Mitigating Risk of Contagion – Mexico’s Guidelines

- On May 29, 2020, several Mexican agencies issued a Decree containing technical guidelines for the reopening of economic activities, established in order to reactivate the economy (the “Guidelines”).
- The Guidelines are of general application to all work centers.
- Establishing specific measures to achieve either a return to or continuity of the work activities.

Mexico's Guidelines Measures

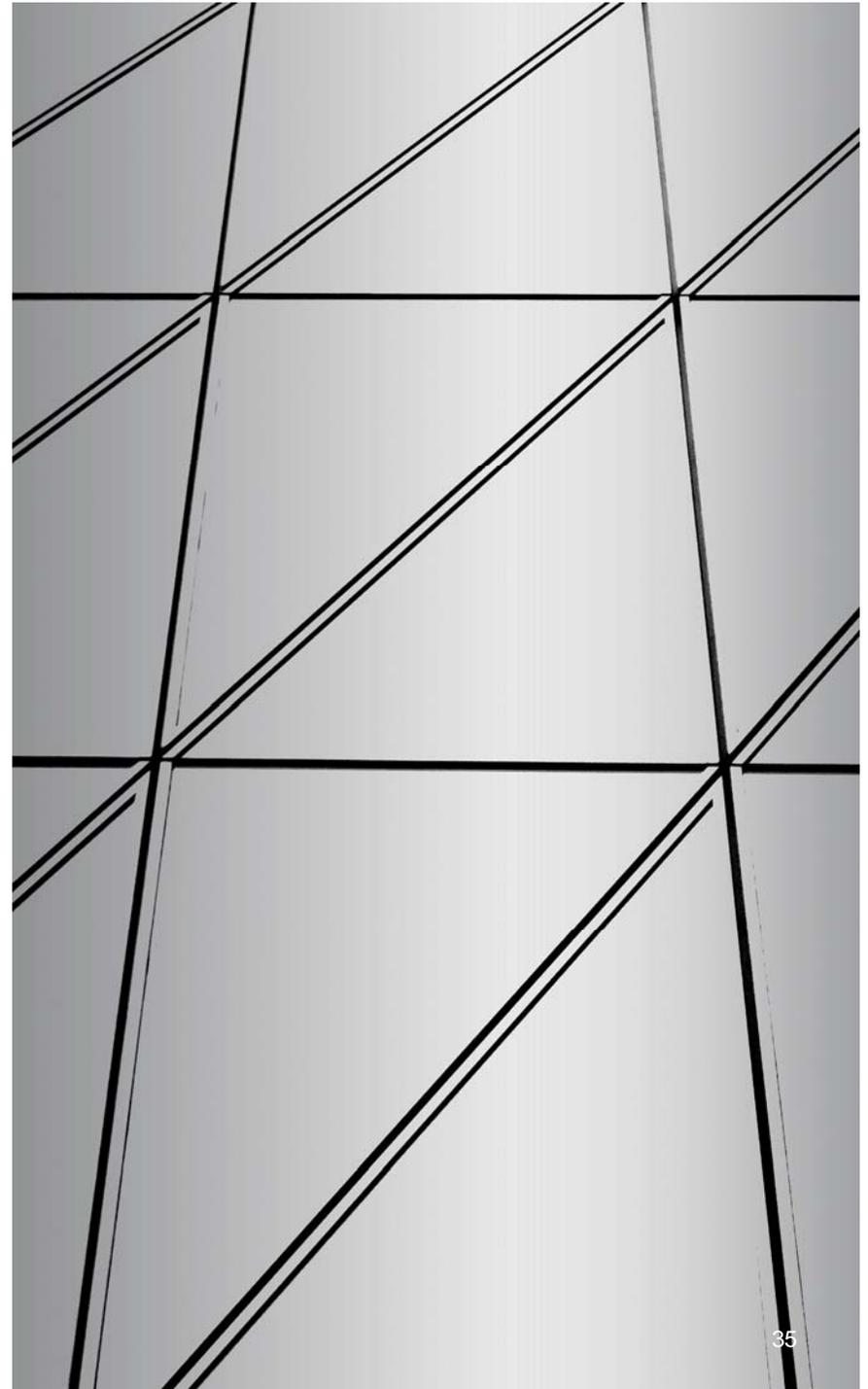
- Mandatory measures applicable to each company may vary depending on the companies' work center size, activity, location's etc.
- Relevant measures imposed by the Guidelines that apply across the board:
 - Designate responsible for the implementation of the Guidelines
 - Delimit work areas with physical barriers or ensure social distancing
 - Body temperature must be taken before entering and exiting the company
 - Issue guidelines for the control of visits, suppliers and contractors
 - Training programs on the actions to be carried out to prevent and avoid contagion

Mexico's Guidelines Measures, Cont.

- The Mexican Government has been clear that companies not compiling with the Guidelines might be subject to different administrative sanctions, from fines to temporary closure of their business.
- Mexican Government has established that owners of businesses or their legal representatives will be jointly responsible for observing and monitoring compliance.

Significant Anti-corruption Risk Areas in Mexico

- Use of third party commercial sales agents
- Government procurement
- Customs clearance
- Interactions with police
- Licensing and permitting
- Government inspections
- Charitable donations
- Social contributions
- Extortion relating to project access



Corporate Crime Prevention in México

- Taking into account the Guidelines, the global reach of the FCPA and the corporate criminal responsibility in Mexican law, Mexican companies should create a robust compliance program.
- Relevant industries, such as Oil and Gas, subject to controversy and known to struggle with the industries' high levels of corruption, should give special attention to their compliance programs.
- Companies should also take all the appropriate actions, even during this pandemic, to implement and reinforce measures to prevent corporate crime.

Corporate Crime Prevention

- How compliance departments can implement measures to mitigate the risks, even during the COVID-19 era?
 - Risk assessment as a result of virtual working, implement formal telework policy
 - Conduct trainings communicating standards and employees compliance obligations
 - Create virtual committee meetings to ensure careful approval of new relationships
 - Improve internal controls
 - Record-keeping and reporting standards
 - Implement remote compliance audits and make broader use of data analytics
 - Be very careful about reducing compliance personnel in the high risk COVID-19 environment

Compliance Risks and Recent Trends

V. Q&A - Please use the Q&A function in the Zoom taskbar

Speakers

Maria-Leticia Ossa Daza, Willkie

Partner, Corporate/Head of Latin-American Practice

E-mail: mossadaza@willkie.com

Phone: 212 728 8146



Bill Stellmach, Willkie

Co-Chair, White-Collar Defense Group

Email: wstellmach@Willkie.com

Phone: 202 303 1130



Jay Martin, Willkie

Senior Counsel, Compliance, Investigations & Enforcement Practice Group

Email: jmartin@willkie.com

Phone: 713 510 1799



Speakers

Gabriel Calvillo, Mijares

Counsel, Compliance, Corporate Criminal Liability,
White-collar crime and environmental litigation

Email: gcalvillo@macf.com.mx

Phone: +52 (55) 5201 7400



Enrique Ramírez, Mijares

Partner, Tax, Consulting, Controversy and Litigation

Email: nmoraleramirez@macf.com.mx

Phone: +52 (55) 5201 7400

