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Asian And Middle Eastern Business Ethics Hit Latin America

SUBMITTED BY STEVEN MEYEROWITZ ON TUE, 07/06/2010 - 8:19AM



We recently spoke with Michael Diaz, Jr., the Miami-based managing partner at Diaz, Reus & Targ, LLP, who has spent more than 20 years in private practice defending and investigating Latin American money laundering and public corruption cases. A Cuban-born bilingual international attorney, Diaz (pictured) is a former U.S. government prosecutor who investigated and prosecuted highly publicized corruption, economic, drug, and other cases. Excerpts from his remarks appear below.

“Beware when doing business in Latin America. Thanks to well financed and growing Chinese and Middle Eastern investment there, fraud and bribery are growing as well. Business practices considered unethical, fraudulent, and illegal in the United States, such as bribery and financial ‘favors,’ are largely tolerated and thriving in the developing regions of the Western Hemisphere, with little risk to the perpetrators.

“I use the phrase ‘opportunity with impunity’ to describe these business, trade, and investment relationships, since both parties are often comfortable negotiating with embedded kickback schemes. For example, in Latin America’s mining industry, extra compensation remains a frequent factor in negotiating for drilling, cultivation, or exploitation rights.

“However, that impunity faces fresh challenges from America. The U.S. government has recently passed new regulations and stepped up enforcement of the Foreign Corrupt Practices Act (“FCPA”), anti-money laundering (“AML”) laws, the USA Patriot Act and Office of Foreign Assets Control (“OFAC”) rules. President Obama has pressed hard for passage of additional measures to protect consumers and prevent fraud at home and abroad. And the U.S. Justice Department recently announced that it would not tolerate payoffs to local officials by U.S. companies selling healthcare products in foreign markets.

“Today, public and private entities operating in Latin America face serious penalties if they violate U.S. laws – even if based in China, the Middle East, or Europe. One example: Siemens recently paid more than \$1.3 billion to settle corruption probes in the United States and [Germany](http://www.reuters.com/places/germany) related to alleged bribery of Brazilian government officials. Clearly, the American government is willing to levy fines, freeze bank accounts, and take other steps to enforce its rules on doing business in Latin America – particularly for public companies regulated by the U.S. Securities and Exchange Commission (“SEC”).

“While U.S. pressure is leading to greater scrutiny of foreign investments in Latin America, it has not halted public entities and private corporations from seeking ‘opportunities with impunity.’ One reason is that Latino governments traditionally distrust their ‘big brother’ to the north, commonly complaining that the United States is interfering with Latin America’s right to regulate its own business practices.

“In addition, Latin American nations often see U.S. antifraud and anticorruption regulations as hindrances to their economic growth – particularly during a recession when foreign investment from China and the Middle East comes as badly needed economic stimulus. For many Latin American governments, the creation of new jobs ranks far more important than abiding by U.S. anticorruption laws.

“Faced with these countervailing pressures, any company doing business in Latin America needs to analyze the risks associated with a new investment, acquisition, joint venture, or business transaction. There’s no substitute for due diligence at every step, including a thorough investigation of potential partners in the region. Otherwise, the U.S. company could be exposed to significant legal, financial, and public relations risks if past bribery or corruption charges come to light.

“When drafting business and investment agreements, it’s essential to include provisions that absolve a U.S. company from any corrupt practices committed by a foreign entity. That can make a dramatic difference if the government launches an anti-corruption, anti-money laundering, or fraud investigation.

“The bottom line: Know your customer, know your partner, and know the risks of operating in a region where ‘opportunity with impunity’ remains the guiding principle for doing business.”

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