

Kilpatrick Townsend & Stockton recently hosted a full-day seminar on the issues organizations face when conducting business in Mexico. Our panels not only featured our own experienced attorneys, but also in-house counsel and attorneys from Mexican law firms to provide first-hand perspective and practical information. Takeaways from the sessions include:

### Internal Investigation, Audits & Reviews

**1** **Culture** can affect how to conduct an investigation, audit, or review. In Mexico, many people use **texting applications** to communicate (rather than email), and there is a mistrust of U.S. affiliates or parent companies.

When conducting internal investigations, audits, or reviews in Mexico, please know there is **not an attorney-client privilege similar to the one in the U.S.** Certain professionals, like counsel, have a duty of secrecy or a duty not to reveal. This duty does not apply to the professionals' clients.

**3** To protect themselves, **clients should involve Mexican counsel**; limit the amount of attorney-client privileged information that is available in Mexico and ensure that any U.S. affiliates request and keep any documented legal advice or recommendations.

### Mexican Anti-Corruption Law & System

**1** The system is **new and very complex** and relies on many federal, state and municipal enforcement agencies to cooperate with each other as well as foreign governments, like the U.S. The federal independent special prosecutor over public corruption will be appointed by the Mexican government.

Mexican officials have a **duty to report their relationships** to the Mexican government, except there is a "private life"

**3** The Federal Law Against Corruption in Public Procurement (enacted in 2012) will **no longer be enforced starting July 2017**, and will be replaced by the General Act of Administrative Responsibilities.

### Cybersecurity

**→** Cybersecurity is now a **legal issue irrespective of where you are conducting business**. We are seeing the emergence of a standard of care in **protecting computer networks containing valuable information**, particularly where such information is governed under a regulatory framework. Businesses should endeavor to protect their computer networks either under the legal regulatory framework applicable for their particular industry, or ensure that they are meeting the basic standard of care in preventing and detecting breaches. More importantly, entities should try to **preserve** discussions, reports & engagements relating to any assessments, and enhancements of their computer networks through legal counsel to obtain the benefits of confidential attorney-client privileged communications.

### Cyber Insurance

**→** All companies should consider potential cyber insurance to try to **minimize the costs associated with a cybersecurity incident**. Properly-secured cyber insurance could help pay for legal fees, forensic experts, public relations & crisis management expenses, and even extortion or ransom payments. The cyber insurance marketplace is still relatively new and **companies should consult with experienced insurance brokers and insurance coverage counsel** to ensure that the cyber insurance they procure addresses the specific risks and exposures of the company.

### Intellectual Property

**→** Companies engaging in business in Mexico need to consider **protecting their intellectual property** in Mexico by **filing for trademark and patents** and by taking appropriate steps to ensure their **trade secrets are recognized**. Recent changes in Mexican intellectual property law have streamlined the process. At the same time, U.S. businesses with a supply chain presence in Mexico (and other countries) must be cognizant of the potential for a U.S. patent infringement claim and consider constructing their deals in such a way so as to minimize the risk.

### Privacy

**→** In the first half of **2016, 30 investigations** for the imposition of privacy sanctions were initiated, **22 resulted in a fine** for the data controller. The most sanctioned industries were financial services, insurance, and telecommunications.

Mexican privacy law empowers individuals by giving them **ARCO** rights, which give individuals the right to **Access, Rectify, Cancel** (delete) and **Object** to a controller's information practices with respect to that individual's personal data.

### The Foreign Corrupt Practices Act of 1977 (FCPA) Enforcement Actions Involving Conduct in Mexico

**1** The FCPA's **definition of "government official" is very broad** and includes doctors at government-owned hospitals.

In the case of Zimmer Biomet, conducting a thorough and **complete investigation is crucial** when disclosing conduct and negotiating a deferred prosecution agreement.

### Privacy Notices

**→** All companies subject to the Mexican privacy law must provide a privacy notice that describes the following:

- **Identity and domicile** of the data controller
- **Purposes** of the processing
- Options to **limit use and disclosure** of data
- Means to exercise **ARCO rights**

- **Transfers** to be made, if any (to third parties other than data processors)
- Procedure for notification of **changes to the Privacy Notice**
- If **sensitive personal data** will be used