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## Corporate Governance and Regulatory Compliance Practice Group Newsletter



### **COVID-19. Crisis could trigger acts of corruption in Companies. How to prevent them?**

The crisis caused by the epidemic of Covid-19, which the world faces and has created an impact in Mexico, has required measures in the private sector to reduce uncontrolled propagation. On the other hand, measures by the State Governments and eventually the ones taken by the Federal Government seem to be imminent. Some of the statewide measures that had been announced are, among others: the closure of establishments of non-essential economic activities, suspension of events, social distancing measures and the release of funds to address the health emergency.

On March 24 2020, the Secretary of Health published in the National Official Gazette the executive order establishing preventive measures to mitigate and contain the sanitary risk of the COVID-19 outbreak, including among others, allowing the business continuity only for those economic activities of the private sector that are essential to fight the sanitary contingency, and those operations that do not imply physical concentration of people, transit or commuting of persons.

For those companies that are allowed to continue operating under the home office model, that should not be seen as an easing of policies of the company. On the contrary, it should be accompanied by a clear,

visible and periodic message that policies are not only still in force, but are constantly monitored by the corresponding organs of the organization (Compliance Officer, General Management, Legal Department, Finance Directorate, as the case may be in each company).

At critical moments like this and in the face of potential economic measures by the government in which certain restrictions, prohibitions or concessions are established for certain sectors, unfortunately, companies may face government officials, whether municipal, state or federal, who may be tempted to request a bribe. In this situation some collaborators of the company, due to the sense of urgency, may give in to the request. If this occurs, the health contingency will not be a justification for having given a bribe and it will be in violation of applicable anti-corruption laws, whether state or federal (administrative and criminal), as the case may be, and, surely, in violation of international provisions such as the FCPA of the United States of America, and the UKBA of the United Kingdom, to cite some examples.

On this basis, companies should continue with the constant supervision and shall not allow working from home to tempt members of the organization to pull

away from their policies, since working remotely does not in any way eliminate compliance obligations nor the responsibility to maintain due control.

In addition, Due Diligence over third parties will be crucial at this stage (and also after the crisis) to avoid breaches or even fraudulent actions, so there will have to be constant communication between the Compliance, Legal and Purchase Departments to scrutinize third-party providers, including remote interviews. Therefore, the implementation of the third-party selection process should reassure the execution of written agreements that contemplate protection clauses appropriate to the corresponding circumstances, including the fulfillment of compliance policies by third-party providers, as well as audit rights.

Finally, companies must ensure the involvement of the finance department, so that financial records and checks flow punctually throughout the process chain, even remotely, or approval and scrutiny tools are enabled that can be accessed remotely (such as authorization signatures, filters for payments, establishment of monetary limits, detection of unusual operations, among others).

It is important to alert all members of the organization that frauds and cyberattacks may increase during the health crisis, so we recommend being in constant communication with the IT and Finance departments to avoid being victims of such frauds or cyberattacks.

At Sanchez Devanny, our Regulatory Compliance and Corporate Governance practice has been following

closely the development of the sanitary contingency in Mexico and its legal implications for companies, so please do not hesitate to contact us in case of any comment or question.

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