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ESG ARTICLES

The fight against corruption: a corporate social responsibility

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Corruption represents a global systemic problem. The Mexican Supreme Court of Justice (SCJ) has formally recognized that an organized civil society has a mitigating and reductive effect on corruption, hence, it is fundamental for the new regulatory anticorruption structure in the country. Corruption substantially affects the provision of public services, economic growth, human rights, and the rule of law. This harmful phenomenon, that has often been defined as “the abuse of public power for private benefit”,¹ is present in both the public and the private industry, frequently, in the corporate sector.

Mexico suffers a terrible problem of corruption. Transparency International stated in its *Corruption Perceptions Index 2020*, published in January 2021, that Mexico ranks 124 (out of the 180 countries ranked) in their public sector corruption perceptions index.² The National Institute of Statistics and Geography reported surges in the prevalence rate of acts of corruption for every 100,000 inhabitants. In 2017, 14,635 acts of

corruption were registered,³ increasing to 15,732 in 2019.⁴ This means that, as a country, we are in a very unfortunate position in terms of corruption, and key indicators show no evidence of improvement.

Globalization, the growth of national economies, and the rapid creation of enterprises in various sectors of production, have brought as a consequence the diversification of forms of corruption and even greater challenges for fighting against it. Nowadays, this phenomenon requires a coordinated effort between the state and individuals. Civil society has a crucial role as an agent against corruption, particularly through the exercise of constant vigilance.

By adopting an ESG perspective (Environmental, Social and Governance) in their strategy, companies can contribute to this herculean task, laying the foundation towards building a more resilient, sustainable, and equitable society.

1 María Amparo Casar, *Anatomy of Corruption*, 2nd edition, corrected and expanded. Mexicanos Contra la Corrupción y la Impunidad, México, 2016, p.11.

2 Transparency International, *Corruption Perceptions Index 2020*, consulted July 20th, 2021, available in: <https://www.transparency.org/en/cpi/2020/index/nzl>

3 Mexicanos Contra la Corrupción y la Impunidad, *Analysis of the International Regulation and its Fulfillment in Mexico*, consulted July 20th, 2021, available in: <https://contralacorrupcion.mx/analisis-de-la-normativa-internacional-anticorrupcion-y-su-cumplimiento-en-mexico/>

4 National Institute of Statistics and Geography, *Transparency and Anticorruption*, consulted July 20th, 2021, available in: <https://www.inegi.org.mx/temas/transparencia/>

The Engagement of Civil Society in the Fight Against Corruption

On April 28th, 2021, the SCJ, through the Judgement 253/2020,⁵ recognized that the active engagement of civil society in the fight against corruption is a fundamental asset for the correct performance and enforcement of the National Anticorruption System. The latter is comprised by an assembly of government agencies, that are responsible of coordinating the prevention, detection, and sanction of corruption in Mexico.⁶

The SCJ upholds that the civil society stands as a fundamental counterweight in the fight against corruption. This happens because, through the filing of complaints, authorities can proceed to investigate possible acts of corruption committed by public officers and/or private individuals.

In the recent ruling of the SCJ the role of the civic society goes even further since it is granted a new tool for its active and effective engagement in terms of administrative liability. The SCJ recognizes the right of the citizens to dispute through an *amparo* claim the decision of the investigative body of not investigating, or of terminating an investigation. Judiciously, the SJC incentivizes the joint responsibility and participation of the civil society for the sake of tangible outcomes and effective accountability.⁷

The Fight Against Corruption as an Intangible Corporate Value

Through corporate ethics, a culture of integrity, transparency, the adoption of the best international practices in the matter, and the active participation in the fight against corruption, corporations will achieve the required social responsibility standards that, in turn, will increase their intangible value. The benefit for companies is an improvement of their reputation

5 Mexican Supreme Court of Justice, *Contradicción de Tesis 253/2020*, Mexico, April 28th, 2021, consulted July 26th, 2021, available in: <https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=277197>.

6 Mexican Supreme Court of Justice, *Press Release 112/2021*, consulted July 20th, 2021, available in: <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6419>

7 *Ídem*.

in the industry, as well as with the society and the authorities.⁸

It is fundamental for companies to implement internal controls, manuals, and programs that follow the most advanced national and international standards in the matter. Through these skills, grounded on a true leadership and conviction reflected in their corporate culture, companies can avoid a negative impact (reputational, operative or financial) and even avoid criminal corporate responsibility.⁹

Considering the current state of things in our country, the fight against corruption on a corporate level, as a part of a corporate social responsibility, should not be limited to companies' internal practices, but also enact effective actions and policies to eradicate corruption, through the participation in the investigations initiated -and often avoided by- the government. The latter will increase the confidence of the company's stakeholders and will allow for citizens to become actively involved in this collective effort. Thus, social responsibility as the guiding principle in corporate politics will consequently enhance the company's reputation, its capacity to attract and retain talent and, eventually, its operative and financial performance, in addition of having a favorable impact on society.

This is not only about preventing sanctions arising from law infringement penalties, but also about building a culture of corporate integrity that will, in turn, create financial benefits and new areas of business opportunities for the company and all interested parties, including the society where the company operates.

8 Daniela Morales Galván Duque and Ángel Escalante Carpio, *The fight against corruption, a matter of social corporate responsibility*, *Lexlatin*, 2018, consulted July 20th, 2021, available in: <https://lexlatin.com/opinion/combatir-la-corrupcion-una-cuestion-de-responsabilidad-social-empresarial>

9 Some examples for these standards are: article 25 for the General Law of Administrative Liability; Foreign Corrupt Practices Act, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*; the OECD Program for Latin America on Anticorruption; the United Nations Convention Against Corruption; the ICC Rules on Combating Corruption; the ICC Guidelines on Agents, Intermediaries, and Other Third Parties; the ICC Anticorruption Third Party Due Diligence; the Guidelines for Small and Medium-Sized Entities; the ICC Guidelines on Whistleblowing; the ICC Guidelines on Gifts and Hospitality, etc.

Therefore, it is fundamental for companies to have legal assistance from a multidisciplinary team with an ESG perspective and a broad experience in governance and internal controls. This will enable the construction of a new corporate ethics aligned with the best international anticorruption practices.

As a consequence, companies will strengthen their internal and external procedures and control mechanisms, which will allow them to have a better access to capital and business opportunities, while contributing to build a country of greater opportunities and social equity.

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