TRAVEL ADVISORY: LESSONS LEARNED FROM THE (OFTEN BUMPY) ROAD OF GLOBAL DEALMAKING

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TOPICS TO BE COVERED

1. Avoiding International Corporate Compliance Pitfalls

2. Making your Mexico deal *no problema*!

3. Ten Tips for the Global Deal Lawyer
International Compliance

• Deals/Transactions increasingly must take into account compliance issues
• FCPA is main compliance issue
• An area where US law reaches across international borders (extraterritoriality)
• Could even impact companies that don’t think they are working “internationally”
What is the FCPA?

• U.S. law passed in 1977 to prohibit bribery of foreign officials.
  – SEC Report on Corporate Bribery

• Two key components:
  – Anti-bribery provisions (targeting the person paying the bribes).
  – Accounting provisions: require accurate books and records and adequate accounting controls.
FCPA: Anti-Bribery Basics

Prohibits corrupt offers or payments to foreign government officials, political parties, political party officials or candidates, or to any person for payment to such a foreign official or candidate for improper advantage.
Enforcement Trends

• Aggressive Enforcement
  – Larger penalties
    • Vetco Gray, 2/07: $26.0MM (criminal fine)
    • Baker Hughes, 4/07: $44.1MM (criminal fines, civil penalty)
  – Multinational Investigations/Cooperation
    • Siemens is under investigation by DOJ, SEC and agencies in Europe for corrupt payments in connection with operations in China, Hungary, Indonesia, Israel, Italy, Norway and Russia, together with a separate Oil-for-Food corruption investigation!
Enforcement Trends (cont.)

- **Individual prosecutions**
  - Since 1990, twice as many prosecutions against individuals as corporation
  - In 2007, US Government secured five guilty pleas from corporate executives

- **More Investigations**
  - Nov. 2007 *New York Times* article: DOJ have 60 cases under investigation and five-member FBI team
Other Hot Topics

• More “Foreign Officials”
• Auditing Agents
• Acquisition Due Diligence
• Compliance Monitors
• Voluntary Disclosures
-MEXICO –
WHAT TO CONSIDER

• Foreign Investment Restrictions
• Labor Matters
• Antitrust Regulations
• FCPA Compliance
• Corporate Structure
STRUCTURING THE FDI DEAL IN MEXICO

Mexican Company 1
51% Mexican
49% Foreign
Controlled by Mexicans
Mexican Investment

Mexican Company 2
51% Mexican
49% Foreign
Controlled by Mexicans
Mexican Investment

U.S. Company
100% Foreign Investment
Foreign Investment

Fox, S.A. de C.V.
26%

Fox, S.A. de C.V. has only 49% Foreign Investment

25%
49%
LABOR
Employee Benefits by Law

- 10% annual profit sharing (exception: 1st year of activities) (legal representative also not eligible)
- Vacations between 6 and 12 days a year
- Housing: 5% of salary
- Christmas Bonus: 15 days of salary (Aguinaldo)
- Retirement Fund: 2.5% of salary
- Social Security: variable (around 4% of salary)
- Burden of proof is on employer to show it has complied with law
  - Practice Tip – Service and employment agreements should always be in writing
LABOR, continued

• Statutory Severance
  – Three months of salary
  – “Salary” defined broadly to include benefits
  – Seniority bonus (12 days of wages per year of service when employee has 15 or more years of seniority)

• In actions to reinstate an employee, employer must pay salaries “generated” during litigation if employer doesn’t prevail
DOING BUSINESS IN MEXICO

INFORMAL AND LIMITED ACTIVITIES:
Representative Office

BRANCH FOREIGN COMPANY DIRECTLY DOING BUSINESS IN MEXICO
- Authorization from Foreign Investment Commission
- Record the Foreign Bylaws in the Public Registry of Commerce
- Record the Foreign Company before the Foreign Investment Commission
- Obtain Tax I.D.

INCORPORATION OF A MEXICAN SUBSIDIARY

Limited Liability Company
S de RL
- Authorization of the Name from Foreign Relations Secretariat
- Formalization of Bylaws before Notary Public or Corredor Publico
- Record the Bylaws in the Public Registry of Commerce
- Record the company before the Foreign Investment Commission
- Obtain Tax I.D.

Corporation S.A.
- Similar to US Corp.

Promoting Investment Company
SAPI
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9. Internet time
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10. Time Zones Are Your Friends