

## Launching of the "Business Integrity Register" in Mexico; corporate intangibles on the rise.

The document has three parts: the first, an introduction on what is and the scope of the "Business Integrity Register of the Ministry of Public Affairs (Mexico); the second, an analysis of different aspects of corporate integrity; and the third, contains opinions and conclusions.

### I. What is the Business Integrity Register?

On August 22, 2019, the Ministry of Public Function ("**SFP**") announced the launching of the "Business Integrity Register", an improved mechanism to certify, with an insignia, companies which are actively contributing to promote integrity, ethics, honesty and equality, through the creation of a voluntary, free and stratified registration, for all companies, whether micro, small, medium and/or large, interested in adopting integrity practices, through comprehensive corporate commitments to ethical standards and promotional actions for compliance of its employees and providers.

One of the main goals of the Integrity Register is to certify the companies which decided to enroll, through the granting of the "Business Integrity Label", which aims to acknowledge companies that have standards and parameters to prevent and sanction corruption, through the preparation, implementation and verification of (i) codes of conduct, (ii) organization and procedure manuals, (iii) control systems, (iv) training systems, (iv) human resources policies, (v) reporting systems, and (vi) transparency mechanisms.

Consequently, on April 17, 2020, the SFP presented the digital platform<sup>1</sup> through which companies can enroll in such Register, and which will also have the collaboration of agencies, national and international organizations and academic and business organizations, for the development of mechanisms for the preparation of templates and tools for corporate verification and supervision.

The Business Integrity Label will acknowledge those companies with the best corporate practices, through the promotion of an ethical behavior in their operations, with their collaborators and providers, once a prior verification process of the information provided to the Register<sup>2</sup>, conducted by international, national or academic organizations, according to each case, has concluded.

Although the site recently launched by the SFP has orientation and guidance documents to apply for the enrollment to the Register and thus obtaining the aforementioned Label, there are relevant considerations that every company should be aware of when implementing its integrity, social security and labor policies, as well as regarding harassment and non-discrimination matters.

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<sup>1</sup> <https://integridadempresarial.funcionpublica.gob.mx/>

<sup>2</sup> The information requested to the SFP to evaluate the incorporation to the Corporate Integrity Register consists of the data of the person registering the company, as well as information of the latter, and the policies of corporate integrity, labor security and social safety, respectively.



## II. Business Integrity Considerations

The registration at the Business Integrity Register consists of five modules and a self-diagnosis, through which the SFP analyzes the policies reported to the authority to determine the implementation level of the integrity policy and the requirements it shall cover, in order to avoid certifying companies whose policies constitute simulation acts and ineffective actions to combat corruption and to mitigate legal risks.

The prior design of these policies and their implementation requires efficient and comprehensive legal coordination of the different areas of the company, through innovative and efficient control and compliance programs, since the SFP also requests information regarding good practices in anti-corruption, environmental protection and corporate social impact matters and its commitment with the UN 2030 Agenda, which requires that the policies of companies aiming to be part of such Register, to cover matters such as transparency, privacy, labor rights and obligations in social security matters, as well as human rights, considering the increasing demand for corporate standards concerning non-discrimination, gender and corporate social responsibility.

Given the imminent transformation of the business activity, it is important to highlight three important corporate governance aspects, (i) the creation of teams and departments specialized in the prevention and monitoring of legal risks, especially criminal risks, (ii) the proliferation of tools for the diagnosis and management of regulatory compliance, according to its own standards or via third parties, aiming at national and international certification, and finally (iii) the development of a broad support and services ecosystem to strengthen control and compliance, training and development of competencies, and the increasingly necessary outsourcing of specialized and continuous advice in legal services and auditing.

Likewise, corporate integrity mechanisms will likely evolve in the short term, considering that at an international level the United Nations plan to enact in 2021 the first legally binding international instrument to regulate the activities of transnational companies and other corporations, in the context of international human rights law<sup>3</sup>.

The aforementioned instrument determines the legal responsibility of companies for human rights violations, providing that it is the duty of the States to guarantee effective sanction and reparation mechanisms, as well as the possibility of imposing on companies the creation of financial measures, such as insurances or guaranty trusts, for addressing the demands for compensation and reparation of damages. It also provides that transnational companies are liable for human rights violations caused by their subsidiaries anywhere in the world, and it stipulates that the responsibility of a company arises, if it is controlling or supervising the activity of other entities with whom it has a contractual or commercial relationship, and it does not prevent them from violating human rights through its operations, or when it does not anticipate that such may occur, provided it could have been prevented.

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<sup>3</sup> The most recent draft of the referred international instrument is available at the following link: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG\\_RevisedDraft\\_L\\_BI.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_L_BI.pdf)



Likewise, since January 2019, the Organization for Economic Cooperation and Development ("**OECD**") launched the initiative on responsible business conduct, consisting of the development of standards for the business sector in order for each company to evaluate its behavior and the repercussion that it has on people, the planet and in society in general, in order for it to be capable of identifying and, if appropriate, solving the problems in which it may be involved, or of which it may be causing.

Likewise, anti-corruption and accountability mechanisms have gained considerable relevance in the private sector. The Business Integrity Register specially emphasizes this aspect, since the initiative issued by the SFP is a mechanism to promote compliance with article 25 of the General Law on Administrative Responsibilities, regarding the implementation of integrity policies by companies, and the benefits of the latter in determining the responsibility for the commission of corrupt acts.

In this regard, corruption shall not only be seen as an act against the law with administrative and criminal consequences; in its analysis, it has even been equated as a human rights violation attributable both to public and private organizations.

The Inter-American Commission on Human Rights has already pronounced in this sense, publishing a report on corruption and human rights, where it has already established that this phenomenon has a differentiated impact on the enjoyment and exercise of human rights, with special emphasis on the fact that, when corruption acquires systemic connotations, or, when a public service is co-opted by private interests, preventing the fulfillment of its obligations, it is an act comparable to a violation of human rights<sup>4</sup>.

Another of the actions and policies that the SFP evaluates for the granting of the label and for the incorporation to the Business Integrity Register, are those related to the fulfillment of labor and social security obligations. In that regard, NOM-035 on psychosocial risk factors recently entered into force in Mexico, whose main purpose is preventive, since it seeks to establish the elements to identify, analyze and prevent anxiety, severe stress and adaptation disorders, derived from the nature of the work hours or functions, and of the exposure to severe traumatic events and/or acts of workplace violence, as well as to promote a favorable organizational environment in the workplace.

Since the implementation of NOM-035 is considered an issue inherent to the area of human resources, a large number of companies have delegated this work to such areas, however, although the aforementioned Mexican official standard addresses issues related to psychological and medical care, this is still a norm whose appropriate or deficient implementation can lead to legal liabilities. NOM-035 is not a mere organizational climate strategy; it constitutes a mechanism to guarantee a life free of violence in the workplace, as well as the human right to enjoy fair and satisfactory working conditions, through the development and establishment of decent living conditions.

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<sup>4</sup> Inter-American Commission on Human Rights [U.S.A., 2019]; "Corrupción y Derechos Humanos: Estándares Interamericanos". Available for consultation at the following link: <http://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>



Likewise, the establishment of protocols to prevent and punish labor and sexual harassment, as well as discrimination acts, are in accordance with the parameters required in terms of business integrity. However, most control and compliance programs in this area exclude or minimize these considerations, developing instruments with minimal impact and an analysis of complaints in the area that does not provide solutions, due to the lack of experience in the qualification and treatment of these complaints since, in most cases, such are addressed by internal personnel without the profile for such task. Therefore, inadequate treatment of harassment and discrimination complaints can give rise to high civil and criminal risks.

For example, in the case of Mexico City, the local Criminal Code classifies discrimination as a crime; even though the penalty is low since it can range from one to three years in prison or twenty-five to one hundred days of community service and a fine of fifty to two hundred days, a well-documented complaint may serve as sufficient evidence to prove the existence of non-material damage of a civil nature, which, according to the jurisprudence of the Supreme Court of Justice of the Nation, the damage must be quantified considering the intensity with which the victim was affected, as well as the social repercussion, since discriminatory behavior leaves a mark on the opinion, conduct and attitude of others towards the victim and towards the sector of society to which it belongs<sup>5</sup>, and also that the economic capacity of the responsible is no longer a parameter for the quantification of compensation.

It is imperative to highlight the current relevance of business integrity, since the Register and label recently implemented by the SFP, not only provide a tool to increase the value of the company, but it is expected that in the future those enrolled in such Register, which had obtained the label, will have preferential treatment in the tenders of the federal government (as it is already implemented with the "Gilberto Rincón Gallardo" insignia of the Ministry of Labor and Social Welfare, in terms of inclusion and non-discrimination).

Finally, according to the Global Sustainable Investment Alliance, at the beginning of 2013 there were just over 21 trillion dollars of assets in the world managed in accordance with the Environmental, Social and Governance mandate scheme or "ESG Mandate" scheme, consisting of the implementation of environmental, social and good corporate governance factors, linked to the long-term results of a company, while currently the main sustainability stock indexes consider the integrity and good governance pillar as critical elements to determine its rating<sup>6</sup>.

### **III. Conclusions**

Implementing solid, consistent and holistic business integrity policies provides companies with competitive advantages, as they are seen as a better option for doing business, by generating trust within the company (with employees) and outside the former (with providers and potential buyers).

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<sup>5</sup> Supreme Court of Justice of the Nation, Amparo Indirecto en Revisión 3283/2015.

<sup>6</sup> According to the transnational investment manager *BlackRock*, sustainability and human rights contribute to long term financial results of a company and therefore, continuing incorporating these considerations to the investment analysis, structuring and portfolio and administrative revisions contributes to improving long term risk adjusted rentability. Source: <https://www.blackrock.com/es/themes/inversion-sostenible/integracion-esg>



There is sufficient evidence supporting the existence of a strong positive correlation between the quality and innovation of the corporate governance and the stock performance, which encourages the demand for good practices in good governance and corporate social responsibility, systems to combat corruption (or speak up) and, recently, due diligence regarding risks for human rights violations.

The integration of professionals specialized in the subject with a multidisciplinary profile is recommended for the correct development of business integrity policies, since the scope of these, being broad-spectrum, requires a comprehensive vision of the activities that the company performs as well as those which with it involves.

The success of any corporate integrity policy as an effective mechanism for the prevention of legal risks requires a correct legal articulation, as well as its transversal implementation with the areas of social responsibility, human resources, control and compliance, marketing, finance and client services, in order to efficiently detect all the risks in which a corporation can incur.

Corporate due diligence mechanisms regarding risks for human rights violations are seen as the future of business integrity. However, the absence of specialists in this sector with experience in the corporate field complicates the rapid and effective development of such systems, since it is highly feasible that the respective international and national instruments regulating them are approved beforehand, without existing sufficient technical capacity in the business sector for its implementation.

Adalberto Méndez López  
([amendez@ecija.com](mailto:amendez@ecija.com))

**ECIJA México, S.C.**

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