



February 2020

First-Ever Anticorruption Chapter Included in USMCA

For the first time, anticorruption has been addressed in the trade agreement between the United States, Mexico, and Canada. Specifically, the United States-Mexico-Canada Agreement (USMCA) that was signed into law by President Trump on Jan. 29, 2020, includes the first-ever chapter on corruption. Anticorruption was not formally addressed in the North American Free Trade Agreement (NAFTA), the precursor agreement to the USMCA.

This new anticorruption chapter represents an official commitment by the United States, Mexico, and Canada to support each nation's efforts to combat bribery and corruption. While President Trump signed the USMCA into law, Canada still needs to ratify the deal, and all three countries must implement the terms of the agreement. Specifically, they will need to align their domestic rules with the terms of the anticorruption chapter, as well as the USMCA as a whole.

The anticorruption chapter requires each party to adopt or maintain standards that prohibit a public official from soliciting or accepting a bribe; bribing a public official, including a foreign public official; and aiding or abetting any such offenses. All parties must also adopt or maintain standards to protect accusers that report to competent authorities. Interestingly, the anticorruption chapter requires parties to encourage enterprises to prohibit facilitation payments – these are so-called grease payments to expedite routine governmental action that involves nondiscretionary acts. Currently, the United States Foreign Corrupt Practices Act (FCPA) permits facilitating payments.

The anticorruption chapter includes an entire subsection dedicated to promoting integrity among federal public officials. Specifically, it requires parties to adopt standards for selection and training of individuals for public positions considered especially vulnerable to corruption. The anticorruption chapter also requires parties to adopt or maintain measures on maintenance of books and records, financial statement disclosures, and accounting and auditing standards to prohibit bribe payments. This would give regulators the ability to prosecute companies that record improper payments as proper payments in their books and records, e.g., recording a bribe as a consultancy fee. The anticorruption chapter also encourages all parties to call upon the private sector to develop internal controls, ethics and compliance programs, or measures to prevent and detect bribery and corruption in international trade and investment.

Although each of the United States, Canada, and Mexico currently imposes its own laws designed to combat corruption and bribery, the official inclusion of the anticorruption chapter within the USMCA highlights the joint commitment to combatting corruption and bribery. Fines and penalties for violations of the relevant laws can be significant, and the inclusion of an anticorruption chapter in the USMCA indicates that the three signatory nations will work together to prosecute violations. The United States, for example, continues its aggressive enforcement of the FCPA, [resulting in approximately \\$2.65 billion in fines and penalties in 2019](#). While not as aggressive as the United States' enforcement, Canada fined two individuals and executed one deferred prosecution agreement in 2019 for violating the Corruption of Foreign Public Officials Act. Mexico, which rose eight places to rank as the 130th least corrupt nation out of 180 countries according to the 2019 Corruption Perceptions Index reported by Transparency International, continues to be the lowest ranked among the 36 OECD countries. The first ever Mexican Chief Anticorruption Prosecutor, Luz Mijangos Borja, recently reported that the agency is working on 680 opened investigations. However, the number of enforcement actions remains undisclosed.

Further, the new corruption chapter underscores the importance for U.S., Mexican, and Canadian businesses to maintain effective anti-bribery and anticorruption compliance programs. Like the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC), Mexico's Federal Administrative Law Court that enforces the *Ley General de Responsabilidades Administrativas* takes into account the effectiveness of a compliance program when imposing penalties. There are a number of requirements for such programs to be considered "effective" under Mexican law, but many of the requirements come from the results of cases abroad, including those pursued by the DOJ and SEC. The anticorruption chapter indicates the continued cooperation and commitment to reinforcing each nation's existing anticorruption and anti-bribery laws, which will likely result in heightened scrutiny and an increase of enforcement activities.

About Greenberg Traurig's White Collar Defense & Special Investigations Practice:

Greenberg Traurig's [White Collar Defense & Special Investigations Practice](#) protects companies and individuals under government scrutiny. GT's creative defense lawyers in the US, Europe, Latin America, and Asia Pacific are at the forefront of white collar defense, with wide-ranging experience in structuring internal investigations, developing guidelines, implementing compliance programs, and addressing issues of voluntary disclosure. Their representations involve alleged securities and commodities fraud, Foreign Corrupt Practices Act (FCPA) violations, health care/pharmaceutical fraud, environmental crimes, money laundering, financial services fraud, public corruption/campaign finance, tax corruption, defense contracting, and bankruptcy fraud. In addition, the majority of GT's litigation shareholders and counsel have first-chair trial experience.

Authors

This GT Alert was prepared by **Hugo López Coll**, **Sandra D. Gonzalez**, **Renée A. Latour** ‡, and **Emily Willis Collins**. Questions about this information can be directed to:

- **Hugo López Coll** | +52 55.5029.0008 | lopezh@gtlaw.com
- **Sandra D. Gonzalez** | +1 512.320.7234 | gonzalezsd@gtlaw.com
- **Renée A. Latour** ‡ | +1 202.533.2358 | latourr@gtlaw.com
- **Emily Willis Collins** | +1 512.320.7274 | collinse@gtlaw.com
- Or your **Greenberg Traurig attorney**

‡ Admitted in Virginia. Practice in the District of Columbia limited to matters and proceedings before Federal courts and Agencies.

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. † Houston. Las Vegas. London. * Los Angeles. Mexico City. + Miami. Milan. † Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. ∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. ^ Tokyo. † Warsaw. - Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. †Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. †Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. -Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*