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The Globalization of Corruption: How the Cuadernos Case Raises Legal Issues Beyond Argentine Borders

Many people outside of Argentina, as well as those within, have watched in wonder as the explosive investigation of the *Cuadernos* case evolves and touches upon more and more individuals and companies. Recent experience has taught us that investigations of this magnitude are never contained within a country's borders and individuals and companies that have done, or are doing, business in Argentina must consider the civil and criminal ramifications of the growing corruption scandal regardless of their own culpability.

Clearly those directly involved in corrupt dealings with government officials are the most directly exposed to liability – a fact that is self-evident. However, what individuals and companies may not realize is that their legal issues do not end at the Argentine border.

As an initial matter, over the past two decades cooperation between law enforcement authorities in distinct countries has increased tremendously. As money and investments cross borders, individuals and companies should assume that the ability of Argentine law enforcement to trace those movements is greater than ever. Participating, and perhaps intervening, in the process of information sharing is advisable in order to protect one's interests.

Moreover, as the *Lava Jato* investigation has demonstrated, because of the flow of money across borders, large-scale corruption investigations can lead to criminal liability in multiple jurisdictions. In every jurisdiction where funds related to corruption (or investments resulting therefrom) exist the risk of criminal liability must be addressed. *Lava Jato* has led to criminal investigations in over a dozen jurisdictions and individuals involved have reached plea agreements with multiple jurisdictions. Reaching a plea agreement in a single country while ignoring liability in others is no longer a viable option, as that very agreement could be the basis of an admission of criminal liability in a different country.

Further, we have seen a growing trend of countries initiating money laundering investigations as soon as an individual or company is publicly identified in a particular corruption scandal if found to have assets in that country. Addressing liability must include an evaluation of risk wherever the individual or company has significant assets.

Thus, those involved in the *Cuadernos* investigation cannot conform themselves by addressing their liability in Argentina only. An integrated multi-jurisdictional approach is necessary.

While individuals and companies may be most anxious regarding criminal liability, there are significant civil issues that must be addressed as well. Findings that public contracts involve corruption could have the effect of invalidating those contracts. The harm to companies identified in the *Cuadernos* scandal is self-evident, but it could also have the effect of punishing innocent third-party contractors that are participating in contracts otherwise tainted by corruption.

This legal uncertainty stretches beyond the simple rescission of contracts by government agencies; under the doctrine of *in pari delicto* courts and arbitral bodies may be unwilling to enforce judgments where corruption appears to have been involved at the time of contracting regardless of whether a criminal court has formally found the existence of corruption.

The broad scale effects of corruption scandals such as the *Cuadernos* require that Argentine individuals and companies evaluate their criminal and civil liability and create an integrated multi-jurisdictional strategy in order to respond to the crisis. Being proactive is essential. Foreign companies and financial institutions that have business that touches Argentina must evaluate whether their existing contracts are tainted by the scandal and act proactively to limit the damage that can be caused by the inevitable uncertainty.

Lewis Baach Kaufmann Middlemiss's experienced team advises and represents financial institutions, insurers and other businesses, as well as individuals, in the US and around the world in connection with compliance and regulatory policies, programs and investigations.

For further information please contact:

Manuel S. Varela at manuel.varela@lbkmlaw.com or +1.202.659.7874 or
Cristián Francos at cristian.francos@lbkmlaw.com or +1.202.659.6878

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