



MEXICO AND ARGENTINA FIRMLY MOVE FORWARD IN THE FIGHT AGAINST CORRUPTION. HOW DOES THIS IMPACT ON COMPANIES?

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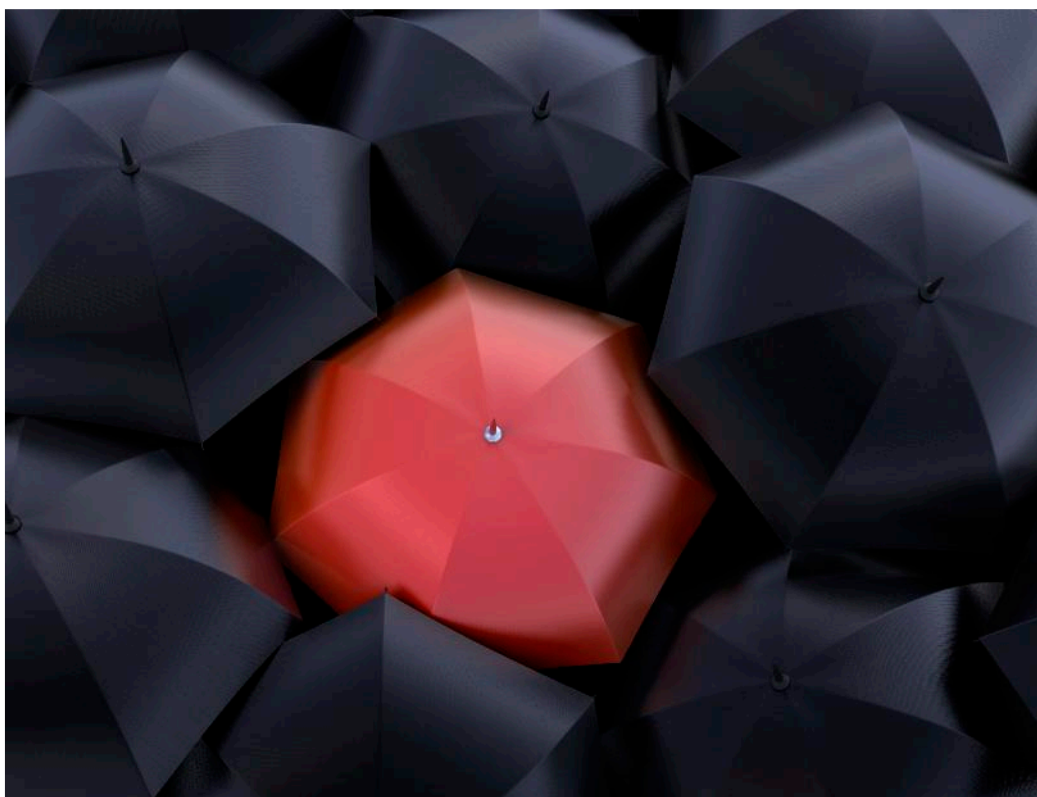


Argentina and Mexico are permanently working on strengthening their business ties. The current turnover between both countries amounts to approximately 2.5 billion US dollars per year, with major Argentine and Mexican companies in the food and beverage, pharmaceutical and manufacturing industries standing out. From the regulatory point of view, several laws have been formulated which have an impact on business done by individuals and companies from both countries, including an agreement to avoid double taxation; and, in line with current international trends, Mexico and Argentina have anti-corruption laws since 2016 and 2018, respectively.

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The international trends of anti-corruption laws show increasingly complex dynamics for companies. The anti-corruption laws having the greatest impact on companies globally are: the US Foreign Corrupt Practice Act (FCPA) enacted in 1977, and the United Kingdom Bribery Act (UKBA) of 2011. These laws apply to companies regulated by the SEC (the agency that regulates the US financial market) and the FSA (the entity that regulates the UK financial market), and their subsidiaries around the world. Therefore, companies that operate in Argentina and Mexico, but also listed in the US and UK markets, are required to comply with these laws, which punish bribery to public servants abroad (and the British law also punishes bribery between private parties). Moreover, apart from the above-mentioned cases of Argentina and Mexico, in Latin America, countries such as Chile, Peru, Colombia and Brazil also have similar laws.

Currently, companies within the scope of any of these laws may be punished in said countries with fines for acts of bribery committed by themselves or by third parties in Argentina, Mexico or any other country where they operate, since the trend, in this kind of laws, implies punishing domestic and international acts of bribery.



This situation created a double standard for a long time, since companies falling within the scope of the FCPA and the UKBA were mandatorily required to follow business transparency practices or, otherwise, they could be imposed fines abroad. For companies outside the scope of these laws, the bribery of public servants did not imply the commission of a crime by the companies but by the individuals involved.

ARGENTINA

With the enactment of anti-corruption laws in said countries, companies involved in acts of corruption may be punished by criminal courts, with fines amounting to 2 to 5 times the illegal benefit received by the company, loss of benefits granted by the Government, prohibition to participate in public bids, full or partial suspension of business and even the company's dissolution. This means that violating this regulation could cause the disappearance of an artificial person due to the participation in an act of corruption.

But the law also includes aspects that promise to transform many business practices in the country, since, under certain circumstances, companies may be released from any penalties when three conditions are simultaneously met:

- ▶ The company has voluntarily reported a crime included in this law, as a consequence of its own internal detection and investigation.
- ▶ The company has implemented an appropriate control and supervision system before the occurrence of the act reported, the infringement of which would have required an effort from the parties involved in the commission of the crime.
- ▶ The company has returned the illegal benefit received.

On the other hand, the law also includes a very interesting concept: the effective collaboration agreement, which will encourage companies to actively cooperate in investigations by providing courts with useful evidence and information, and giving back any items or profits resulting from the crime. In return, they will pay a reduced fine.

Having analyzed this new scenario, we should ask ourselves in more detail what an appropriate integrity program for achieving penalty release consists of.

Currently, the law establishes that integrity programs must be consistent with the risks inherent to the company's business, its dimension and financial capacity. These three aspects will provide courts with a first impression, since the size of each company and the risks in each business will impact the types of controls necessary to minimize the chance that company employees or third parties may involve the company in acts of corruption.

Furthermore, the law highlights three mandatory elements of any integrity program: an Ethics Code, procedures to prevent illegal acts in public bids and training in integrity programs for all members of the organization. And a number of elements to be considered:

- ▶ Regular risk analysis and the resulting adjustment of the integrity program.
- ▶ Visible and unequivocal support to the integrity program by the top management and directors.
- ▶ Internal channels to report irregularities, which should be available to third parties and well promoted.
- ▶ A policy that protects whistleblowers from any retaliation.
- ▶ An internal investigation system that respects the rights of the individuals under investigation and that imposes effective penalties for the violation of the Ethics Code or Conduct Code.
- ▶ Procedures to check the integrity and career of third parties or business partners, including suppliers, distributors, service providers, agents and brokers, at the time of hiring their services and throughout the business relation.
- ▶ Due diligence throughout corporate reorganization and acquisition processes in order to verify irregularities, illegal acts or the existence of vulnerabilities in the companies involved.
- ▶ Continuous monitoring and assessment of the effectiveness of the integrity program.
- ▶ A company officer in charge of developing, coordinating and supervising the integrity program.
- ▶ Compliance with the regulatory requirements applicable to these programs ordered by the respective national, provincial, municipal or communal law enforcement agencies governing the company's business.



MEXICO

The Mexican Government has made efforts to fight corruption, which have been in line with different national and international laws supporting the ongoing surveillance of Government officials and third parties making transactions with each other.

The National Anti-Corruption System is a forum for coordination across different federal and local authorities in charge of preventing, detecting and punishing administrative responsibilities and acts of corruption, as well as of monitoring and controlling public resources, in which citizens also participate through a Committee.

Laws

The main Mexican laws supporting the investigation and punishment of acts of corruption are:

- ▶ General National Anti-Corruption System Act (Ley General del Sistema Nacional Anticorrupción), which, among other things, establishes the coordination bases at all government levels.
- ▶ General Law on Administrative Responsibilities (Ley General de Responsabilidades Administrativas), which, among other things, establishes public servants' responsibilities and duties, as well as serious administrative offenses and penalties on public servants and private individuals.
- ▶ Federation Monitoring and Accountability Act (Ley de Fiscalización y Rendición de Cuentas de la Federación), as amended by the Fiscal Coordination Act (Ley de Coordinación Fiscal) and the Governmental Accounting Act (Ley de Contabilidad Gubernamental), which set forth provisions that support the Superior Audit of the Federation (Auditoría Superior de la Federación, a body of the House of Representatives) in fighting corruption.
- ▶ Organic Law of the Federal Administrative Court (Ley Orgánica del Tribunal Federal de Justicia Administrativa), which turns the Federal Tax Court into the Federal Administrative Court. This court will be in charge of punishing serious offenses committed both by public servants and private individuals.
- ▶ Organic Law of the Republic's Attorney General's Office (Ley Orgánica de la Procuraduría General de la República), to create the Special Anti-Corruption Prosecutorial Unit (Fiscalía Especializada Anticorrupción) as an autonomous entity to investigate and prosecute acts of corruption.
- ▶ The Federal Criminal Code that strengthens the framework of conducts and penalties applicable to public servants and private individuals.
- ▶ Organic Law of the Federal Public Administration for the Internal Control of the Federal Executive (Ley Orgánica de la Administración Pública Federal en Materia de Control Interno del Ejecutivo Federal), which supports the Ministry of Public Administration (Secretaría de la Función Pública) in the prevention of and fight against corruption.

Administrative Offenses

The General Law on Administrative Responsibilities (Ley General de Responsabilidades Administrativas or LGRA) establishes, among other provisions, the acts and penalties applicable to private parties (natural and artificial persons) involved in "Serious Administrative Offenses", including:

- ▶ Bribery
- ▶ Embezzlement
- ▶ Deviation of public resources
- ▶ Misuse of information
- ▶ Abuse of functions
- ▶ Acting under a conflict of interest
- ▶ Undue contracting
- ▶ Concealed enrichment or concealment of conflict of interest
- ▶ Influence peddling
- ▶ Concealment
- ▶ Contempt
- ▶ Obstruction of justice



Public servants incurring in non-serious and serious administrative offenses will have the following penalties:

NON-SERIOUS OFFENSES

Penalty imposed by: Secretariat or internal control bodies

- ▶ Public or private reprimand.
- ▶ Suspension from work, position or assignment for 1 to 30 days.
- ▶ Dismissal from employment, position or assignment.
- ▶ Temporary disqualification for 3 months to 1 year to serve as a public officer or to perform duties or assignments in the public sector, and to engage in acquisitions, leases, services or public works.

SERIOUS OFFENSES

Penalty imposed by: Federal Administrative Court (*Tribunal Federal de Justicia Administrativa*)

- ▶ Suspension from work, position or assignment for 1 to 30 days.
- ▶ Dismissal from employment, position or assignment.
- ▶ Monetary penalty.
- ▶ Temporary disqualification to serve as a public officer or to perform duties or assignments in the public sector, and to engage in acquisitions, leases, services or public works, for one to twenty years, depending on the consequences of the administrative offense; and for three months to one year in case there are no damages nor any benefit or profit resulting

Criminal offenses.

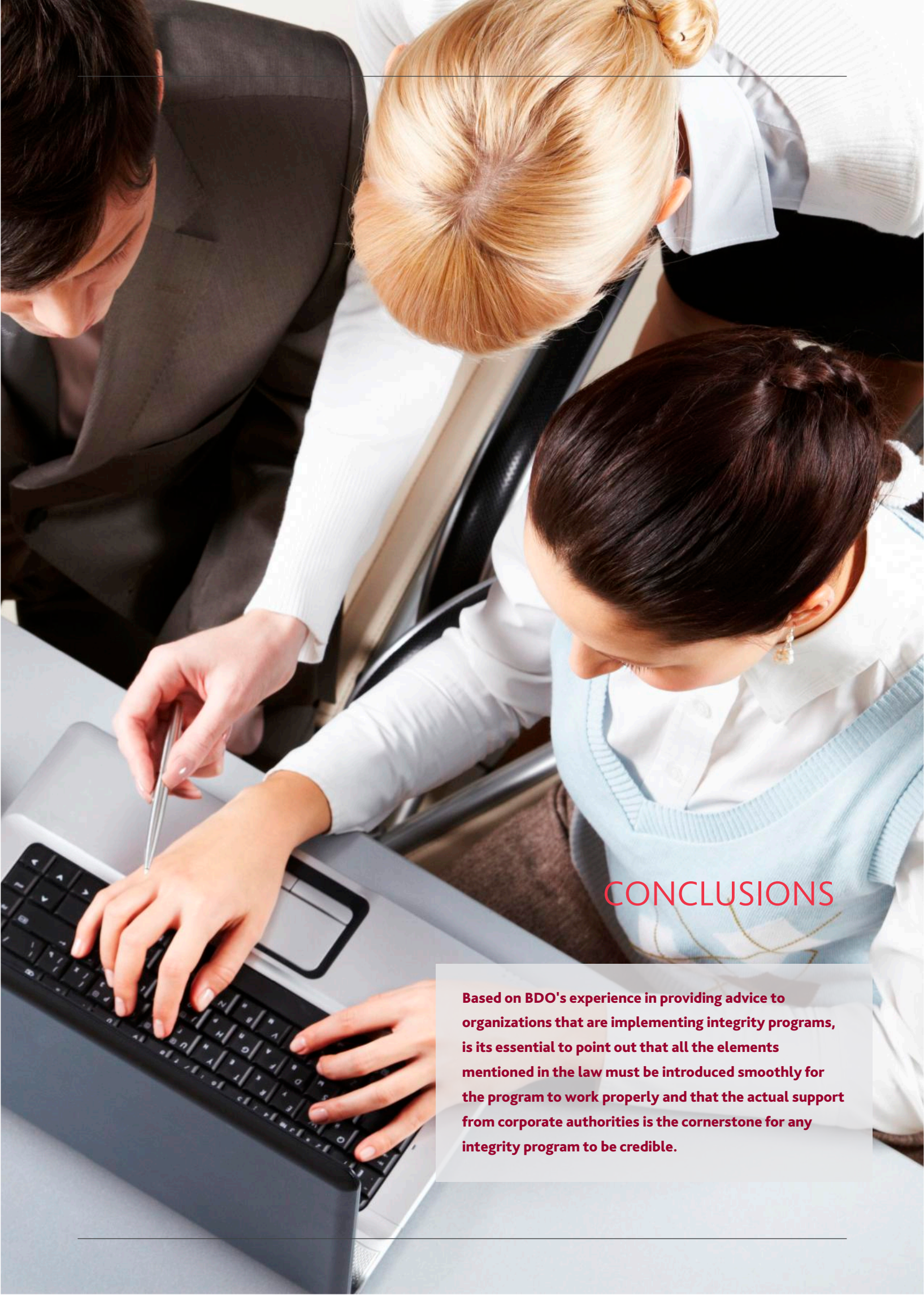
The Federal Criminal Code, sections 212 to 224, establishes the crimes caused by acts of corruption in which a public servant may incur.

Crimes

- ▶ Illegal exercise of public function
- ▶ Abuse of authority
- ▶ Forced disappearance of people
- ▶ Coalition of public servants
- ▶ Misuse of powers
- ▶ Extortion
- ▶ Intimidation
- ▶ Abuse of functions
- ▶ Influence peddling
- ▶ Bribery
- ▶ Bribery of foreign public servants
- ▶ Embezzlement
- ▶ Unlawful enrichment

Penalties:

- ▶ Imprisonment
- ▶ Monetary penalty (fine)
- ▶ Seizure of property resulting from unlawful enrichment
- ▶ Dismissal
- ▶ Disqualification for serving as a public officer and for taking part in acquisitions, leases, services or public works, concession for the provision of public services or for exploitation, leveraging and use of Federation's property, for a term ranging from 1 to 20 years, depending on the existence and amount of the damage and the benefit obtained.



CONCLUSIONS

Based on BDO's experience in providing advice to organizations that are implementing integrity programs, it is essential to point out that all the elements mentioned in the law must be introduced smoothly for the program to work properly and that the actual support from corporate authorities is the cornerstone for any integrity program to be credible.

CONCLUSIONS

In order to face this challenge, it is important to propose an integrity program mainly aimed at aligning people's conduct, in which the compliance officer will play a key role in educating the members of the organization and the different stakeholders, in terms of what is and is not acceptable for the organization, applying innovative technology tools for the program to achieve high impact, under an organization-based scalable scheme of costs. Thus, it is necessary not only to develop training programs, have a whistleblower line and written policies and procedures, but also to take actions proactively to align human conduct in the organization.

The tools that allow managing integrity programs with the proposed approach not only are currently available for any kind of organization, at very competitive costs and with high impact on companies using them, but are also the best way to act proactively in the development of integrity programs, and are very useful to document any action taken in case of potential court investigations.

The companies that quickly understand the need to rapidly start implementing solid integrity programs will be able to take a step forward to transparency, and not only will they avoid potential fines but also they will be making a valuable contribution to fight corruption, which requires the commitment of all Argentine and Mexican citizens.

Therefore, Mexico and Argentina, which are committed to a structural change in their punitive system, have focused on these new laws to fight corruption.



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ABOUT BDO MEXICO LEADERSHIP (CONSULTANCY IN FORENSIC INVESTIGATIONS)

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BDO Mexico has the experience and methodology required to support your organization based on your specific needs and requirements, which contributes added value to our services and a timely decision-making.

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