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THE COCA COLA COMPANY INVESTIGATED FOR TAX EVASION

Recently, it has become common practice to establish and run “payer” companies. These are associations that are constructed either with the sole objective of evading payment of labour and tax benefits or associations that are formed to lighten the commercial responsibilities of companies with numerous suppliers, disconnecting them from the headquarters, which evidently holds the necessary capital to comply with said obligations. They create simulation schemes to elude compliance with labour, tax and commercial obligations, among others. This is why said companies are currently under close watch by the Tributary Administration Service. Coca-Cola is one example which we shall discuss in further detail later on.

The Tributary Administration Service, upon request of the Secretariat of the Treasury, is carrying out an investigation into the tax evasion of The Coca Cola Company in Mexico regarding three of its subsidiary companies: The Coca Cola Export Corporation, the “payer” company Integrated Administration and Senior Management Services (SIAAGSA) and The Mexico branch Coca Cola Export Corporation.

The present investigation arose in response to the complaint filed by the ex-director of market development, Ángel Alvaro Agüero, who has spent four years seeking to prove the fraud incurred by The Coca Cola Company in Mexico, to the detriment of its employees, the treasury and the Mexican Institute for Social Security (IMSS).

As was commented by the Company at the time, in 2007, Ángel Alvaro Agüero who for 16 years was senior director of the business The Coca Cola Company was fired allegedly without justification. Consequently he filed a labour complaint, processed before the Special Council of the Federal Council of Settlement and Arbitration, in addition to a complaint of fraud before the Attorney General’s Office, the Federal Tax Attorney’s Office and the IMSS as well as the legal and labour authorities of Mexico City on the following grounds:

In 1987, The Coca-Cola Export Corporation (CCE), subsidiary of The Coca-Cola Company, the largest soft drinks producer in the world and its branch in Mexico, of the same name, created an association named Integrated Administration and Senior

TORRE WORLD TRADE CENTER WTC CIUDAD DE MÉXICO
MONTECITO # 38 PISO 38 OFICINA 38 COL. NÁPOLES
C .P. 03810 CIUDAD DE MÉXICO
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Management Services (SIAAGSA), with the aim of leaving the latter in charge of hiring staff, salary distribution, payroll, as well as taking care of the benefits of this company's staff.

That is to say that Coca-Cola Export has been simulating a scenario before its employees claiming that the true boss is SIAAGSA, an association created by Coca-Cola Export exclusively as a way of avoiding payment of PTU (Employees Participation in Utilities), salaries and other benefits, which legally correspond to the employees of Coca-Cola. The only real activity carried out by SIAAGSA is that of the "payer" company for The Coca-Cola Export Corporation.

Therefore, in the case of the ex-director Ángel Alvarado Agüero, Coca-Cola Export's defence has been to deny any working relationship between the two, claiming that the latter was never a Coca-Cola Export employee, but rather a SIAAGSA employee. The above has clearly displayed the simulation incurred by The Mexican branch Coca-Cola Export Company, given that this company technically does not have employees and consequently does not distribute utilities, pay taxes or fees to the IMSS (or does so to a minimum).

It is a serious matter, given that the 85 thousand employees that belong to the company in this country are legally separate from The Mexican branch Coca-Cola Export Corporation which is where the real wealth is generated, mainly by extract sales.

By being legally unconnected to the company the employees do not benefit from the real utilities of the company, rather they receive those generated by SIAAGSA, which for tax and labour purposes is not linked to Coca-Cola Mexico. However, incidentally the latter is the SIAAGSA's only client and is run by the same executives as the soft drinks producer. It is for this reason that the Secretariat of the Treasury, the IMSS and the employees see very little of the money that would in reality be around 700 million dollars in utilities obtained by Coca-Cola per year in Mexico.

PTU is precisely one of the most claimed benefits in terms of this matter, given that any unclaimed import on utilities from the year in which they can be claimed, will be added to the dividable utility of the following year, in accordance with the Federal Labour Law. This means to say that the right to receive PTU that has not been liquidised to the workers shall not be assigned whilst said employee continues to work for the company and in the case of ex-employees the law grants a period of one year in which to claim the accumulated PTU pay.

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As you can imagine the estimated contingency in these circumstances for The Coca-Cola Export Corporation is considerably high given the transnational's copious utilities and the fact that the employees that continue to work there could demand PTU payment for all the years that they have been working for the aforementioned company.

Despite the above and the investigation into the company in our country, the president of The Coca Cola Company, Muhtar Kent, denied on April 27th, before the Annual Shareholders Meeting, that they are under investigation for tax evasion.

Felipe Gómez Mont, Ángel Alvarado's lawyer in Mexico assured the magazine "Proceso" that the case remains open with a number of legal authorities in Mexico given that the scheme used by Coca-Cola has fraudulent implications in terms of labour, tax, legality and administration, amongst others. Additionally, he disclosed documents that prove that the Treasury received the complaint and found in its preliminary legal analysis elements with which to take legal action before the Attorney General's Office for tax fraud that may reach 70 million dollars per annum. Therefore, if the accusations of fraud held against Coca-Cola were found to be true, the company would lose a figure ranging in the billions.

The labour file 390/2007 is being processed before the Federal Council on Settlement and Arbitration, the preliminary investigation FDF/T/T2/1078/08-12 opened by the Federal District Local Attorney's Office is being implemented and, furthermore, the lawyer assured, "Several of those involved, of high rank in Coca-Cola, such as James Quincey (president of Coca-Cola Mexico when Alvarado sued the company), will have to present themselves to testify in response to orders given by Mexican legal authorities".

Currently the Tributary Administration Service and the competent institutions belonging to the Federal Tax Attorney's Office within the exercise of their verification faculties are reviewing papers, interrogating officials, verifying the functioning of electronic systems and registers and in general they are putting the magnifying glass on Coca-Cola in all areas relating to tax and fee payments to the IMSS. In this way the Tributary Administration Service is reviewing inside out the SIAAGSA and Coca-Cola in Mexico, and the Federal Tax Attorney's Office is gathering elements to carry out proceedings against them.

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CONCLUSIONS

As we have already mentioned, it is currently common practice for companies to create their own businesses with the sole purpose of transferring their staff and productive activity, in order to disassociate themselves from salaries and benefits, and minimise their obligations with treasury, the IMSS, the INFONAVIT (National Trust for Workers Housing), amongst others, given that in theory the headquarters do not have employees, or have very few.

There is no doubt that for the earlier mentioned labour trial purposes, The Coca-Cola Export Corporation must be considered as largely responsible. Therefore, the utilities generated by them are those that must be taken into account in order to order the PTU payment, and not those of SIAAGSA. On the other hand, from a tax and penal point of view, it could be said that The Coca-Cola Export Corporation has been committing the crime of tax fraud by using a simulation to omit payment of contributions, to the detriment of the federal treasury.

We consider that the present matter shall set a fundamental precedent, therefore we invite companies to avoid simulation of legal acts that put their functioning at risk and produce contingencies that otherwise would be avoided.

CORPUSIURE INTERNATIONAL ASSOCIATED FIRMS leave at your disposition this Company's associate lawyers for advisory services regarding the topics discussed in this bulletin, in addition to any other comments or suggestions regarding these topics.

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