



# Between hope and reality

**The evolution of a compliance culture  
in selected countries**



2017

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# Executive summary

**In recent years, compliance – the act of complying with established guidelines, specifications or legislation, or the process of becoming compliant – has become increasingly relevant for businesses around the world. By now, many companies have established measures and controls to ensure compliance and avoid violation of regulations. However, implementing effective measures is easier said than done. Focusing on Germany and Brazil, this publication aims to contrast aspirations with reality in terms of the evolution of a compliance culture, i.e. the norms that define the foundation for individual conduct within an organisation, even in the absence of explicit rules. Based on the current perception of selected experts outside the company<sup>1</sup>, this publication outlines how far compliance culture has progressed in the private sector and what key challenges remain from a practical perspective.**

<sup>1</sup> Experts interviewed for this publication include consultants who help private and public sector clients to design, implement and test compliance management systems as well as representatives of trade associations who convey business concerns to policy-makers and the general public.



## Country focus: Germany

The understanding of the term compliance has evolved significantly in Germany over the past ten years, turning from a reactive mode that focused on single issues to a more comprehensive and formalized approach today. This development has been driven by prominent cases of non-compliance in the German business environment. Companies have become aware of the potential legal and reputational consequences of misconduct and have begun to invest in compliance management systems (CMS).

Many large companies have continuously strengthened their CMS and are now refining measures by enhancing flexibility and risk orientation. However, for most German companies a comprehensive and effective CMS is still a long way off. Although many organisations have set up CMS elements in recent years, experts see considerable room for improvement with regard to risk orientation and effectiveness, in particular for small and medium-sized enterprises (SMEs). Major obstacles are a lack of commitment at the top and a rule-based approach which often leads to a vast number of abstract rules and regulations. Experience shows that

incidents of non-compliance often occur because compliance requirements have not been adequately integrated into daily operations, or requirements contradict with other performance targets. Although Germany is currently seen to exert less supervisory pressure on companies to install effective compliance systems than other countries, there are strong indications that sanctions for non-compliance will rise significantly in Germany over the coming years, e.g. in the area of anti-money laundering and data privacy.

To promote integrity at the corporate level and improve the acceptance and effectiveness of compliance efforts, experts see the necessity of active involvement by internal stakeholders (i.e. employees, management and owners), as well as increased cooperation between governmental bodies and businesses. As companies are expected to comply with a growing number of national and international requirements, it is essential that these requirements are harmonized, clear and workable, and that positive recognition is conferred for corporate compliance efforts.

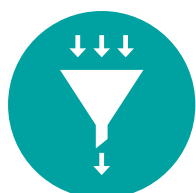


## Country focus: Brazil

In 2013, after years of passive acceptance, Brazilians had had enough of corruption and took to the streets. The new anti-corruption legislation of 2014 and 'Operation Car Wash' – a federal police investigation that turned into the largest judicial case of corruption in the history of Brazil – made executives increasingly aware of the implications of the law and the possible consequences for themselves and their companies. As a result, interest in setting up compliance measures rose significantly. However, with the exception of a few multinationals, most Brazilian companies, even top tier organisations, have only recently started to invest in CMS. Their efforts are perceived to be in their initial stages, focusing mainly on low-cost measures such as codes of conduct and whistleblower hotlines.

In order for companies to move forward, experts see a need for adequate systems that pay attention to company-specific risks and integrate the full range of integrity parameters specified by law. Significant obstacles currently include a lack of awareness among business leaders, scarce resources, and a shortage of experienced compliance professionals. Building capacity is essential if local companies, especially SMEs, are to achieve compliance. The government must address the demand side of corruption and improve the efficiency and transparency of public administration. Various legislative and judicial anti-corruption initiatives are under way at the national and state level, but the reform process has revealed that some lawmakers may have conflicts of interest.

Although experts are witnessing a paradigm shift in the country, they also note that it will take time to foster a culture of integrity at the political, business and cultural level.



## Conclusion

Compliance gained significant momentum both in Germany and Brazil after corruption cases hit the headlines. Governments are strengthening their legal framework in response to public demands for accountability and transparency. Companies are reassessing their legal and reputational risks and increasing their investment in compliance. Although efforts to combat corruption and misconduct started and unfolded differently in both countries, Germany and Brazil share common challenges.

The next five to ten years are expected to bring about decisive changes for the compliance culture in both countries and experts are optimistic that the combined efforts of governments and businesses can contribute to a culture of integrity.

### Common challenges for Germany and Brazil

- Compliance with legal requirements is necessary but not sufficient. A trend towards a broader definition of compliance, in the sense of integrity, can be observed in both countries.
- A culture of integrity starts with the genuine commitment of owners and top executives. Their day-to-day conduct, as well as the financial targets and remuneration structure they set, must reflect their determination to combat misconduct.
- Measures need to be effective. Measures that only serve as window dressing or try to control employees with excessive compliance requirements provide limited value added for the company (and society).
- Day-to-day compliance is not lived by the compliance department. Company employees constitute the first line of defence. The rules need to be relevant to the work that they do and address existing trade-offs between performance targets and integrity.
- The majority of SMEs, which make up 99% of companies in Germany and Brazil, still see compliance as an additional burden with limited benefits for the company. To reach out to this group, capacity building is essential.
- The genuine support of governments is needed to drive legislative reform and enforcement.







# Country focus: GERMANY

## 1 The road travelled – the development of compliance in Germany

Looking back at the mid-2000s, experts agree that only few people in Germany were familiar with the term compliance. Even for professionals who dealt directly with issues relating to compliance, the term carried a different meaning than it does today. For professionals in the financial sector, for instance, the term compliance related directly to anti-money laundering or combating terrorist financing. The understanding of the term has evolved significantly over recent years, evolving from a single-focused meaning to the more comprehensive interpretation with which it is associated today. According to the experts who took part in this publication, the evolution of the definition of compliance and its increased public awareness in Germany has primarily been driven by prominent incidents of non-compliance in the German business sector. Cases of corruption, antitrust or market manipulation involving German companies received extensive media coverage, informing the public about the first indications of malpractice, court dealings and, in one prominent instance, even the criminal conviction of a former chief financial officer. Companies became aware that non-compliance could cause significant damage to their reputation and may result in a considerable loss of confidence by internal and external stakeholders. Some of these scandals also fuelled public discourse, which resulted in a broader understanding of compliance. For a growing number of companies in Germany, compliance is considered to go beyond the

'conventional' meaning of abiding by rules and policies and to include ethical and moral considerations in a broader sense. The question is no longer "Are we doing things according to the rules?", but rather "Are we doing the right thing in the right way?"

In recent years, the growth in importance of compliance has boosted demand for related consultancy services. Compared to 2006, volumes of consultancy in designing, implementing and maintaining CMS have increased significantly and the practitioners expect the trend to continue over the coming years. The complexity of services that companies seek has also changed. Services used to focus mainly on individual topics such as money laundering and corruption. Over time, demand for more comprehensive compliance support has grown, where different topics play a part within a larger context. Frameworks and standards (such as the IDW AssS 980) serve as guidance for many companies when developing their CMS. In addition, an increasing number of companies are improving existing measures to raise the effectiveness of their efforts and to implement ongoing, effective monitoring. Experts are also observing a continuous shift away from services that focus on the design and implementation of a CMS towards audit and assurance services for an existing CMS.

## 2 Reality check – what is the current status of compliance in Germany?

According to compliance experts, the way in which companies organize their compliance efforts, and the intensity of their efforts, varies greatly between companies of different sizes and sectors. By nature, compliance programmes were pioneered and driven by the largest German entities, especially those listed on international stock exchanges. They were the forerunners in setting up compliance functions with substantial manpower and clear responsibilities. In some instances, direct involvement in regulatory issues, e.g. US rules and regulations, due to international operations required CMS investment. Experts have also observed a substantial increase in compliance programmes in general, along with an increasing number of compliance professionals. One expert estimated that two out of every three companies with a compliance programme have a compliance team consisting of up to five employees. One third of companies has a compliance team with a larger headcount, which in some cases can even be as high as several hundred employees. At the same time, experts point out that many German companies still allocate their compliance functions to the legal counsel, or within other departments such as internal audit. Thus, staff may carry out compliance tasks alongside their other responsibilities. The size of compliance departments also depends on whether the company has experienced any negative media coverage or prosecution in the past. Extensive compliance departments are also observed in the pharmaceutical industry and financial institutions. Due to the increasing regulation of financial services providers, experts have observed substantial investment in CMS over the past ten years. For example, a well-staffed compliance department at a financial institution may have consisted of 25 employ-

ees in 2005, but a comparable institution would now employ between 300 and 400 staff to deal with compliance issues on a day-to-day basis. Similarly, the headcount of a compliance department at an insurance company would probably have increased to a headcount of 20 today, compared to just one person ten years ago. Overall, it is estimated that 80–90% of banks currently have sufficient personnel in their compliance department, whereas this is only the case for approximately 50% of companies in the insurance industry, with the exception of a few lighthouse examples.

Experience shows that there is a wide array of compliance systems installed, with regard to both their content and sophistication. There is clearly no unique one-system-fits-all concept. However, even though the maturity of CMS is partly linked to the size of the compliance department, several experts underlined the fact that size does not necessarily translate into effectiveness and efficiency in such systems. Many large, publicly listed companies have continuously strengthened their CMS and are currently experiencing a stabilisation phase. Compliance has become an integral part of their day-to-day operations and some of these companies are now adapting or even downsizing their CMS, cutting down on paper tigers and enhancing flexibility and risk orientation along the way. These forerunners aside, however, experts believe that many companies in Germany still have a long way to go to achieve an effective CMS. Even though a large share of companies have already set up certain elements of compliance programmes over recent years – including compliance functions, codes of conduct and training – experts still see many shortcomings and room for further improvement, in particular among SMEs. Weaknesses include,

for instance, the lack of a structured approach to assess and document company-specific compliance risks, poor integration with internal process-level controls, or inadequate monitoring. According to experts, having a system in place does not always imply having a system that works, even among the financial institutions that have implemented CMS across the board. Experts estimate that only 60% of banks and a mere 30% of insurance companies have a system that effectively prevents and mitigates risks.

Compliance in Germany has come a long way and its importance has clearly increased over recent years. However, compliance still faces a variety of challenges in the German corporate world. Experts continue to experience a lack of compliance awareness at both the top executive and middle management levels of many firms. Strategic goals and development plans still focus too little on compliance-related issues. Even though the majority of corporate leaders consider compliance to be a generally relevant topic for the German corporate sector, some experts estimate that only one in seven top executives is likely to classify it as a priority issue for themselves or their company. Without commitment from the top, however, an effective CMS is impossible to establish. The mantra that the 'tone at the top' is key for corporate integrity still holds true and is often seen as a challenge. Without genuine commitment, i.e. the willingness of owners and top executives to increase integrity in their organisation, assess financial targets and set positive examples themselves, compliance initiatives are destined to fail. Installing 'alibi' systems without identifying and addressing high-risk issues, or filling key compliance positions with random veteran managers, clearly sends the wrong message.

Experts have observed that the most effective trigger for commitment still seems to be first-hand adverse experiences of non-compliance and the violation of ethical and moral conduct, together with the resulting negative consequences. In this regard, however, regulation, supervision and, more importantly, sanctions in Germany still seem to lag behind other countries. When speaking about typical German traits, two characteristics are often named – a high degree of formalisation and attention to detail. With regard to the

**Having a compliance system in place does not necessarily imply having a system that works.**

current status of compliance-related regulation and supervision in Germany, these tendencies have also been observed by experts. The level of bureaucracy tends to be high and there are very specific rules governing specific issues and sectors, e.g. the Minimum Requirements for Risk Management (MaRisk). These specify the requirements set out in the German Banking Act regarding risk management in financial institutions in line with the Basel standards. Few other countries are seen to have regulations that are so extensive and detailed. It remains to be seen whether these typical German characteristics will contribute to the compliance culture in a positive way.

### 3 Looking ahead – where does compliance in Germany go from here?

Experts believe that supervisors in the US and the UK, as well as in other countries such as Austria, Switzerland, Luxembourg and Italy, exert more pressure on companies to install functioning compliance systems. Germany, however, is seen by some experts to be lagging behind in terms of enforcement. The most prominent cases of major sanctions against German companies still occur in the US. However, Germany might be undergoing a change in this regard since German chancellor Angela Merkel recently pointed to the deterrent effect that public sanctions could have on corporations, and how sanctions could improve the integrity of market players and overall integrity in the marketplace. It is expected that sanctions for regulatory non-compliance will increase in the coming years. Sanctions defined in the regulations for market manipulation, for instance, already foresee penalties amounting to EUR 15 million or 15% of revenue from the previous year. With regard to money laundering and data protection, along with the recent adoption of the Fourth Anti-Money Laundering Directive and the General Data Protection Regulation at EU Level, fines for money laundering could amount to EUR 5 million or 10% of revenue from the previous year, while data protection breaches could lead to fines of up to EUR 20 million or 4% of revenue. In comparison, the previous anti-money laundering law in Germany defined maximum sanctions of EUR 100,000. Alongside these financial sanctions, the German Federal Financial Supervisory Authority has recently introduced another instrument that may prove highly effective when it comes to sanctioning non-compliance. The 'naming and shaming' initiative uses the internet to publish the names of companies that have been identified in instances of non-compliance and that face supervisory sanctions. These records will be accessible to the general public for a period of five years.

Experts still consider the question of what constitutes a good CMS to be a controversial issue. Some experts see the promotion of internationally applicable standards such as ISO 19600:2014 (general compliance) and the newly issued ISO 37001:2016 (anti-bribery compliance) as a step in the right direction, while others do not share this view. Although there is no one system or approach that is right for all, certain basic considerations are seen as key to improving the effectiveness and efficiency of compliance efforts. Companies need to acknowledge that day-to-day compliance is not carried out by compliance departments. While this department defines relevant rules and standards, the employees on the ground are the ones who need to act upon these rules. Hence, the compliance functions form the second line of defence for compliance risks, while the first line of defence consists of employees at the operational level. Accordingly, employees need to be aware of the rules, but more importantly, the rules need to be relevant to the work that they do and integrated into process- and function-specific guidelines. Experience shows that it is not a lack of compliance policies and standards that causes incidents of non-compliance, but rather the fact that the first line of defence is unaware of these policies, or they are not adequately integrated into day-to-day operations. As one expert explained, compliance rules and policies tend to be designed on an abstract level, like a jumbo jet flying at ten thousand feet; what people really need on the operational level are practical guidelines cruising at the height of a helicopter.

Compliance programmes in German companies tend to follow a rule-based approach. The systems often consist of a vast number of policies, procedures, controls and reporting mechanisms. While a structured and formalized approach ensures that the compliance framework is set up in a prudent way, the real success factors for a sustainable and effective CMS are the attitudes and values of the company's employees. They need to feel responsible for the integrity of the company and have reasonable empowerment to make their own decisions. Awareness of compliance-relevant issues, however, does not develop automatically. Measures at a corporate level, especially the right incentives and soft controls to strengthen integrity and value orientation, are needed to establish a sustainable culture of integrity within companies. To be accepted by management and employees, the CMS needs to be designed in an enabling way, addressing existing trade-offs between business development and corporate integrity. To improve acceptance and the effectiveness of the system, it is essential that the relevant departments and individuals become involved in the initial phases of planning, implementing and revising the CMS. Conflicts that arise need to be solved in a constructive and flexible way so that companies are well aware of their risk positions and can control them adequately.

In general, experts agree that political impulses are helpful. However, to improve the acceptance and effectiveness of measures put in place, they see a need for more dialogue between both political and corporate parties. As companies are expected to comply with a growing number of national and international requirements, it is essential that these requirements are clear and easy for companies to understand.

Policies and rules are often perceived as having been developed far from the practical reality of businesses. This impedes effective implementation at the corporate level because acceptance of these policies and rules at the operational level is low. Some practitioners also note that compliance is still mainly associated with negative issues, both by internal and external stakeholders. A more positive approach to corporate efforts (e.g. through the provision of leniency programmes) would help companies to promote integrity at the corporate

**The real success factors for sustainable and effective CMS are the attitudes and values of the people.**

level. Consequently, compliance efforts would not only prevent and detect misconduct, but also serve as a defence in cases of non-compliance.

In addition, international exchange and harmonization is considered crucial, both with regard to regulation and supervision. Rules and standards should be harmonized in terms of scope and content, and should be implemented by major countries. International cooperation between jurisdictions needs to be strengthened to implement common approaches and modes of supervision and sanctioning.





# Country focus: BRAZIL

## 1 The road travelled – the development of compliance in Brazil

The development of compliance in Brazil over the past years has been described by experts as “unprecedented”, “overwhelming” and “exceeding all expectations”. They believe that ten years ago, only 1% of people knew of the term compliance. Even the few who knew about it associated compliance with financial markets, the provisions of the Brazilian central bank or the law on anti-money laundering issued in 1998. Corruption and facilitation payments were perceived as part of daily life in Brazil. They were something that everyone knew existed but it was a matter not generally discussed by the public or within the corporate world. Around 2007, large multinational companies with operations in Brazil started developing and implementing CMS. Some were driven by non-compliance incidents that they had experienced in Brazil or elsewhere. Others reacted to regulatory changes in other countries by implementing CMS in their entities worldwide, including Brazil. The compliance measures were aimed at protecting companies and their employees against sanctions. Demand for related consultancy services began to emerge. Over the following years, some of the multinational companies exerted certain knock-on pressure on local companies in their supply chains by demanding basic compliance measures such as codes of conduct. According to experts, compliance programmes outside the sphere of influence of these global players were generally non-existent in Brazil.

In 2013, the Brazilian people took a stance against corruption, and the idea of compliance gained significant momentum. Millions of citizens gathered in major cities like Rio de Janeiro and São Paulo, denouncing corruption and malpractice in the country. The public demonstrations encouraged discussions

about corrupt practices in society and business and put an unprecedented amount of pressure on the political elites of the country to take action in the fight against corruption. A new law to curb corruption in the private sector – in addition to existing anti-corruption laws – had been under discussion for some time, but had yet to be ratified. The Clean Companies Act (Law No. 12,846) came into force on 29 January 2014 and prescribes severe sanctions for a broad range of corrupt practices. The subsequent Decree No. 8,420 issued on 18 March 2015 regulates the Clean Companies Act and contains several provisions relating to the implementation of CMS. Based on the new anti-corruption legislation, legal responsibility in cases of corruption and bribery extends to corporate entities, rather than just to individuals, according to the criminal act. Sanctions defined in the regulation include the retraction of funds, as well as penalties that could amount to 20% of a company’s gross revenue of the previous year. In addition, the law includes the possibility of dissolving companies by court order, entering offenders into a newly created registry and excluding these particular companies from future public tenders. Although the regulation does not obligate companies to set up a CMS, it provides a strong incentive to do so. In order to mitigate the drastic penalties and sanctions, companies need to have effective integrity mechanisms in place which are designed to prevent and reduce corrupt practices. The integrity programme at the corporate level must unequivocally meet a set of 16 binding parameters defined in Decree No. 8,420. Prosecution can be carried out by a wide range of authorities, including departments at state and municipal levels.

The country also witnessed the subsequent disclosure of Operação Lava Jato (Operation Car Wash). What started out as a federal police investigation into money laundering operations carried out at a petrol station with a car wash facility in Brasilia in 2014, has since turned into the largest judicial case of corruption in the history of Brazil. Investigations to date have uncovered a massive network of corruption woven by some of the largest public and private companies, involving prominent executives and top-level politicians. Public prosecutors in Brazil have taken a decisive stance in this affair, which has

**The general pressure to 'do the right thing' has increased substantially.**

led to a vast number of arrests – a situation unprecedented in Brazilian history. So far, Operation Car Wash has resulted in more than 240 criminal charges and 118 convictions<sup>2</sup>, including well-known politicians and influential executives of top-tier companies in Brazil – a group of people who were previously believed to be 'untouchable' by many Brazilians due to their financial resources and political influence. After years of passive acceptance, Brazilians have had enough of corruption. Despite the weak economy, which raises other substantial issues, corruption has become their top concern. As Operation Car Wash progresses, sentences are to be expected and voters may show their dislike of those involved at the ballot box.

## 2 Reality check – what is the current status of compliance in Brazil?

Driven by recent developments, especially the impact of the 2014 anti-corruption law and the Car Wash scandal, public awareness and social pressure have steadily increased with regard to the fight against corruption in Brazil. While in 2014 many doubted whether the new law would actually be enforced, perceptions changed when the first top-tier companies, high-level executives and prominent public officials were prosecuted and charged with corruption. These developments made executives in Brazil increasingly aware of the implications of the law and its possible consequences for them and their companies. Interest and demand for setting up compliance and integrity systems rose significantly. Today, experts are witnessing an unprecedented cultural shift with regard to the fight against corruption. Public demand for the prosecution and sanctioning of companies in the private and public sectors, together with general pressure to 'do the right thing', has increased substantially. Experts say that young people in particular are determined to make a difference. Equipped with international experience and networks, these people constitute a driving force at the corporate and political levels, promoting a cultural shift towards more integrity and value orientation in both society as a whole and the business world.

With regard to the maturity of CMS in Brazilian businesses, experts unanimously share the view that they are still in their infancy. With the exception of large multinational companies operating in Brazil, which have installed a CMS along with their international peers, local Brazilian companies, even top-tier players, have only recently started to develop CMS. The efforts are perceived to be in their initial stages. They mainly focus on developing codes of ethics, installing whistle-blower hotlines and conducting training, i.e. 3 out of the

<sup>2</sup> [http://www.transparency.org/news/pressrelease/brazils\\_carwash\\_task\\_force\\_wins\\_transparency\\_international\\_anti\\_corruption](http://www.transparency.org/news/pressrelease/brazils_carwash_task_force_wins_transparency_international_anti_corruption)

16 parameters of the integrity system as defined by the anti-corruption law and decree. Experts currently see an urgent need for the development of comprehensive measures that focus on company-specific risk positions and integrate all 16 parameters specified in Decree No. 8,420. Companies further need to ensure that compliance rules are translated into appropriate compliance action on all levels of the organisation.

At the current time, experts believe that very few companies in Brazil have an effective CMS in place. One expert classified the majority of companies without an adequate system into two groups: one that is aware of its compliance shortcomings and one that is not. The first group is aware but currently lacks the financial and personnel resources to address these deficiencies. In the overall economic downturn, companies are more reluctant to set aside funds to invest in a CMS. Budgetary constraints lead to a growth in the number of companies investing in 'lower cost' components of a CMS, including the setting up of a hotline or the introduction of a code of conduct. Even when companies are willing to invest, the lack of compliance professionals with practical experience forms another bottleneck for progress, according to experts. The second group comprises companies that are not yet aware of their compliance deficits and the actual benefits of establishing an effective CMS. While some of these companies may have implemented basic measures, others have not. As the new law incentivizes the implementation of a CMS, a number of companies deploy CMS elements as a form of 'window dressing' with no attention to their actual effectiveness. According to experts, it is essential to acquaint executives with the fact that corporate measures will only be recognized as a defence if

the relevant authorities consider them effective. According to an ordinance issued by Brazil's anti-corruption body CGU<sup>3</sup>, programmes that are merely pro forma and have no effect on risk mitigation cannot be considered eligible for reduced penalties.

Among SMEs, which make up 99% of local enterprises, experts observed a rush for compliance upon the initial publication of the law. However, due to the sheer number of companies and the vast area of Brazil, experts estimate that only 10% of SMEs are even considering compliance issues today. The majority perceive the new rules and regulations as an additional burden to the many obligations they already face, according to one expert. To reach out to this group, capacity building is considered essential. Initiatives that offer training and peer-to-peer exchange have started. In some cases, experts have developed creative instruments in order to extend their reach – one is currently exploring cartoons to demonstrate the benefits of compliance and the risks associated with non-compliance. Small companies also need external support in implementing compliance measures as internal resources are often scarce. Technological support, e.g. in the form of pooling resources and sharing existing templates, can be helpful. However, experts warn that a company's specific risks need to be placed at the centre of any kind of compliance efforts, and there is no blueprint for compliance measures that can be applied across the board. To facilitate the implementation of compliance and integrity systems, the 16 parameters as defined by Decree 8,420 have been reduced in their application for small companies (especially with regard to third-party due diligence), one expert explained.

<sup>3</sup> The former agency has lately been transformed into the Ministry of Transparency, Supervision and Control (CGU)



### 3 Looking ahead – where does compliance in Brazil go from here?

Although the country is currently undergoing a fundamental change, experts agree that it will take time to foster a culture of compliance and integrity. One expert noted that although most people denounce large-scale corruption at political and business levels, they still appreciate the possibility to speed up or resolve day-to-day issues with small payments. Governments must address the demand side of corruption. Experts note that some companies prefer to do business in the private sector and try to avoid encounters with public officials altogether. Non-transparent and inefficient processes at the administrative level increase the risk of facilitation payments. One example given was the registration process for new companies, which can take several months. Raising the transparency and efficiency of public administration is key to reducing the prevalence of corruption.

While changes in society will positively influence business conduct in Brazil, experts believe that this is a two-way street, whereby changes at the corporate level can also play an important role in strengthening integrity in society. Acting in an environment that is still perceived by many as being corrupt, companies can raise their employees' awareness with regard to what is right and wrong by providing an enabling environment. Some experts believe that the majority of people will choose to do the right thing when this is enforced, for instance by peers or their company. Companies need to demonstrate that instances and allegations of corruption are taken seriously, that these are followed up by investigations and that sanctions and penalties are taken when necessary. By creating such a corporate environment, employees will not only make the company safer, but will also contribute to positive cultural change within the country.

Experts believe that requirements originating from the market, business partners and financing sources will play a crucial role. It is expected that, based on the requirements of the anti-corruption legislation, an increasing number of entities will require their suppliers and business partners to have an effective CMS in place. As one expert explained, certain public financing institutions have begun to include the aspect of integrity systems in their preconditions for credit extension. On the regulatory level, initiatives gearing into this direction are also under way. The draft law No. 2041/2016 currently under discussion in the state of Rio de Janeiro includes a provision to make it mandatory for companies that enter into contracts with public institutions exceeding values of BRL 1.5 million (approximately EUR 400,000) to establish an integrity programme. External certification of the CMS in line with international frameworks may play a role in this context. However, experts agree that the majority of local companies are far from ready for certification today. Current efforts should, therefore, focus on creating awareness among local companies and supporting their capacity building.



Various legislative and judicial initiatives exist at national and state levels, which aim to increase regulatory and supervisory action on anti-corruption. However, the reform process has revealed that some lawmakers may be facing conflicts of interest. One prominent example is a proposal by the Brazilian Federal Prosecution Services, which has received wide public support and is provoking fierce debate. The so-called “Ten Measures against Corruption” campaign calls for legislative reform to enhance the capacity of public administrators to prevent and detect corruption, and law enforcers to investigate, prosecute and penalize it. Brazil’s lower house voted to significantly weaken the legislation in November 2016, causing an uproar among federal prosecutors.

While much remains to be done to overcome the challenges on the political, corporate and cultural levels, experts believe that the compliance movement in Brazil will stride forward decisively over the next five to ten years.

**Changes at the corporate level can play an important role in strengthening integrity in society.**

# About the publication

The publication was prepared by KPMG Germany, the Alliance for Integrity and the Lateinamerika Verein e.V. It compiles current perceptions of selected practitioners outside the company, i.e. experts who are dealing with the design, implementation and testing of CMS, as well as those who formulate business concerns and convey them to policy-makers and the general public. To illustrate the results, we chose two focus countries: Germany, which will host the G20 Summit in 2017 and chair the G20 Anti-Corruption Working Group (ACWG) in 2017, and Brazil, which strengthened its anti-corruption legislation considerably in 2014 and is co-chairing the G20 ACWG

in 2017. By selecting two countries with different national legal frameworks, we outline similarities and differences in dealing with compliance by way of example. The interviews with selected consultants and representatives of trade associations (including BDI, BDA, DIHK and FIRJAN) in both countries were conducted by KPMG Germany between August and December 2016. The results provide a snapshot of current challenges in the area of compliance in two different countries.

# About us

KPMG is a network of professional firms with more than 174,000 employees in 155 countries.

In Germany too, KPMG is one of the leading auditing and advisory firms and has around 9,800 employees at over 20 locations. Our services are divided into the following functions: Audit, Tax, Consulting and Deal Advisory. Our Audit services are focused on the auditing of consolidated and annual financial statements. The Tax function incorporates the tax advisory services provided by KPMG. Our high level of specialist know-how on business, regulatory and transaction-related issues is brought together within our Consulting and Deal Advisory functions.

We have established teams of interdisciplinary specialists for key industries of the economy. These pool the experience of our experts around the world and further enhance the quality of our advisory services.

KPMG Forensic & Compliance Services assists clients in identifying compliance risks and achieving business integrity. We support legal counsel, boards of directors, audit committees, and management in gaining a clear understanding of the regulatory environment, the systems and processes which can help to ensure compliance and sound corporate governance, and the facts necessary to determine whether there has been fraud, misconduct, or violations of laws, regulations or company policies. We use accounting, investigation, intelligence, economics and industry skills alongside consistent global methodologies to help reduce reputational risk and commercial loss. In addition, we deploy technology tools to deal effectively with large amounts of data and documentation, to manage and disclose important material, or to highlight fraud, weaknesses and business opportunities from within corporate data.

The Alliance for Integrity is a business-driven, multi-stakeholder initiative seeking to promote transparency and integrity in the economic system by fostering collective action among the private sector, public sector and civil society. The initiative is commissioned by the German Federal Ministry for Economic Cooperation and Development and implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. The Alliance for Integrity is a platform that offers practical solutions to strengthen the compliance capacities of companies, contributes to the improvement of framework conditions by fostering dialogue between the public and private sectors and serves as a global contact point for businesses countering corruption collectively.

The Lateinamerika Verein e.V. (LAV) was established in 1916 by merchants from Hamburg and Bremen. It is the networking and information platform for German companies with business interests in Latin America. LAV helps companies from all sectors to establish and expand their business activities in Latin America and the Caribbean and promotes economic, political and social relations between Germany and countries in the Latin American region. Members of LAV include companies from Germany and Latin America ranging from medium-sized enterprises to global corporations, and also associations, public institutions and individuals.

# Your notes

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