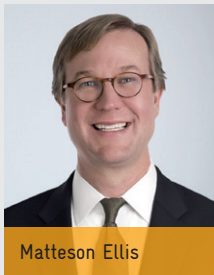
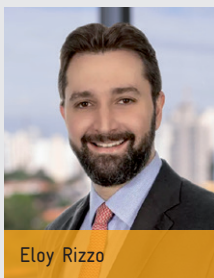


GROWING CORRUPTION RISKS AND COMPLIANCE PRACTICES DETECTED IN LATIN AMERICA



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Recent data on business perspectives in Latin America reveal two interconnected trends regionwide – while corruption risks in the region are seen to be growing, corporate anti-corruption compliance practices are gaining traction as well.

In July 2020, Miller & Chevalier published the results of the 2020 Latin American Corruption Survey in which it partnered with fourteen law firms throughout the region, including Beccar Varela (Argentina), Demarest Advogados (Brazil) and Carey y Cía (Chile), to survey almost 1,000 compliance officers, senior executives, directors, and in-house lawyers. The survey gathered information on respondents' familiarity with local anti-corruption laws and investigation and enforcement efforts in local jurisdictions, as well as the steps their companies are taking to combat corruption. Miller & Chevalier conducted

similar surveys in 2008, 2012, and 2016, enabling an analysis of trends over time.

Increase in corruption risk

Survey responses suggest that corruption risk is prevalent throughout Latin America now more than ever. 54% of survey respondents say that corruption is a significant obstacle to doing business, up 10% since 2012. Only 45% of respondents believe offenders are likely to be prosecuted, down from 66% in 2008. The vast majority of respondents think their anti-corruption laws are “not effective” or only “effective to a small extent.”

Of the major countries in the region (those with over US\$100 billion GDP), the survey results show that Venezuela, Mexico, Argentina, Brazil, and Ecuador are considered the most corrupt, with over 50% of respondents working in each country saying that corruption is a significant obstacle.

The survey gauged levels of perceived corruption associated with specific areas of government. The results suggest that, regionwide, almost all areas of government are implicated with notable levels of corruption. Between 60% and 70% of surveyed businesspeople rank the executive branch, judicial branch, police, municipal/local governments, and state-owned companies as significantly corrupt across the region. Political parties (77%) and the legislative branch (70%) are seen as even more corrupt regionwide. The one government area perceived regionwide as less corrupt is “prosecution service or investigators”, with less than 50% of respondents classifying them as “significantly corrupt” and 12% of respondents perceiving them as having “minimal to no corruption”.

These results are somewhat surprising given the considerable progress seen in the region with enforcement of anti-corruption laws resulting in blockbuster cases like Lava Jato, Fédération Internationale de Football Association (FIFA), the Argentine notebooks scheme, and Guatemala's La Línea scandal. More high-powered politicians and business leaders than ever are under investigation, awaiting trial, behind bars, or wanted in exile. It is possible that more enforcement has generated more awareness of the prevalence of corruption in the region.

More companies embracing compliance safeguards

Both large and small companies in Latin America appear to be embracing anti-corruption compliance protections at a greater rate than before.

Progress is most apparent among multinational companies operating in the region. These companies register jumps in anti-corruption training (64% in 2008, 76% in 2012, 85% in 2016, 84% in 2020), anti-corruption policies (88% in 2012, 92% in 2016, 85% in 2020), gifts/travel/entertainment procedures (81% in 2012, 85% in 2016, 86% in 2020), anonymous reporting mechanisms (65% in 2012, 66% in 2016, 78% in 2020), and full-time compliance personnel (56% in 2012, 63% in 2016, 70% in 2020). Increased enforcement and government expectations for compliance programmes are likely driving this continued focus on compliance by multinationals, in addition to growing commercial pressures from business partners, investors, external auditors, lenders, and other stakeholders to meet common compliance standards.

Though local and regional companies are adopting these measures at lower rates, their efforts still show improvement over prior surveyed years. 73% of these companies have anti-corruption policies, 51% have anti-corruption training, 49% perform due diligence on third parties, and 59% utilise anti-corruption contract terms. Even in countries where companies display relatively lower rates of compliance practices (Dominican Republic, Ecuador, El Salvador, Nicaragua, Panama, and Paraguay), more companies than in 2016 have adopted basic policies and training, suggesting that the most basic of programme elements might be taking hold across the region.

The data also reveals greater acceptance in the region of more nuanced areas of compliance suggesting that the enhancement trend is substantive in nature and not reflective of superficial attempts by companies to show a veneer of compliance while ignoring the rigors of actual controls and procedures. 57% of respondents report that their companies have established full-time compliance personnel – up from 44% in 2012 and 48% in 2016. This upward trend holds true for both local/regional companies (21% in 2012; 26% in 2016; 38% in 2020) and multinationals (67% in 2012; 70% in 2016; 77% in 2020). 60% of respondents report that their companies conduct assessments and audits, an increase from 51% in 2012 and 56% in 2016. Increases are seen for both local/regional companies (32% in 2012; 38% in 2016; 46% in 2020) and multinationals (61% in 2012; 69% in 2016; 71% in 2020). Due diligence policies for third parties continue to increase (49% in 2012 to 59% in 2016 to 64% in 2020). Here again, the upward trend applies to both multinationals (60% in 2012 to 66% in 2016 and a jump to 81% in 2020) and local/regional companies (32% in 2012 to 49% in 2016 to 49% in 2020).

It is possible that these two trends are linked. The more businesspeople perceive corruption as a threat for doing business in Latin America, the more likely they are to prioritise compliance measures. The more enforcement efforts underway in Latin American markets, the more incentives companies have to embrace anti-corruption compliance best practices.

Practical recommendations for companies

In light of increased perceptions of corruption risk in Latin America, as well as continued enforcement in the region of international anti-corruption laws like the U.S. Foreign Corrupt Practices Act (FCPA), companies have several reasons to embrace anti-corruption compliance measures.

As the data shows, adopting compliance measures represents a general trend in the region and not doing so would put a company out of step with the efforts of other companies operating there. Not performing steps like risk assessments, design and adoption of anti-corruption policies, due diligence on third parties, and compliance audits and assessments could lead to greater exposure for companies if and when they are impacted by

issues of bribery corruption. Moreover, not only do U.S. enforcement officials expect companies to perform basic compliance efforts, new local laws throughout Latin America now provide mitigated treatment to companies under investigation that can show they had adequate compliance measures in place.

Considering this more regulated environment and the new business pressures and opportunities created by Covid-19, companies should embrace concrete steps. Internally, companies should periodically revisit their risk analysis and adjust it in accordance with the company's KPIs and the realities of their industry.

With respect to relationships with public officials, companies should continuously revisit the list of employees and third parties that interact with governments and periodically train them. This should be complemented by thorough due diligence and monitoring of third parties that interact with public authorities, such as agents, distributors, consultants, custom brokers and lawyers, as they can be a common channel of undue advantages for government officials. Companies should be mindful when communicating with public officials to ensure that (1) this communication always happens via official channels, for example not via private chats, unless this is defined in the company's policies and is monitorable; (2) the communication is documented; (3) calls via zoom, Microsoft Teams or Skype are recorded; and (4) interactions always include more than one representative from the company.

Specifically for the case of emergency sales to the government, companies should record and file the conditions that generated the emergency sale, the internal decision-making process, including the rationale for the pricing, and always keep in mind how an enforcement agency might see the process when analysing it in a few years.

In the case of donations to government entities, these must occur without any expectation of compensation by the government and should be directly given to government entities, without the involvement of third parties. Again, the entire decision-making process should be recorded, and the donation should be made public and official.

In conclusion, companies can utilise the findings of the 2020 Latin American Corruption Survey to benchmark their own efforts in a variety of areas of compliance against those of other companies operating in the same markets. The data can be used by companies to inform their periodic risk assessments and give colour to their anti-corruption compliance trainings. To the extent local partners and third parties in the region push back on cooperating with due diligence efforts and agreeing to compliance commitments, the survey data can be utilised to demonstrate that these practices are now commonly accepted. If needed, internal compliance departments can use the data to make the case internally for larger budgets that enable them to engage in practices that are on par with their peers.

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