

KEY FINDINGS OF 2020 LATIN AMERICAN CORRUPTION SURVEY: WHAT CAN COMPANIES DO BETTER?

The case of Argentina, Brazil and Chile



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In this Compliance Bulletin, country compliance experts have summarised the main findings of the 2020 Latin American Corruption Survey published by Miller & Chevalier. After a regional analysis made in the Compliance Bulletin 17, we zoom in on the results and experience from Argentina, Brazil and Chile.

Argentina

I. KEY FINDINGS

1. High levels of corruption, more corruption perceived in the executive branch since 2016 and government inability to address corruption

Argentina remains as one of the countries in the region with the highest level of corruption (over 50% saying that it is a “significant obstacle”). Thus, there is a notable change: the corruption level perceived in the executive branch increased from 50% in 2016 to 74%. Additionally, fewer respondents think prosecution of offenders is likely (falling from 53% to 39%), while only 2% of Argentine respondents think their country will lead the way on anti-corruption enforcement in the future.

To understand such results, it must be taken into account that in August 2018, the “Notebook” case, the biggest corruption scandal in Argentina, was made public in the press. It revealed a corruption scheme that occurred from 2003 to 2015, involving former presidents, top-ranked public officials and big companies’ directors. Even so, the case is pending trial and people being investigated for corruption have returned to public office.

Besides, at the time the survey took place, there was a newly elected national government (it came into office

in late 2019). Prosecutions being viewed as politically motivated and people being uncertain on the enforcement of anti-corruption laws in the new political context may explain the perceived government inability to address corruption.

2. New key local anti-corruption laws generate optimism in Argentina

The law on Corporate Criminal Liability entered into force in 2018 making legal entities liable for corruption offences. It also amended the Argentine Criminal Code to expand its extraterritorial reach and punish foreign bribery. This law encourages companies to implement compliance programmes and specifies their elements. To help companies comply with them, the Anti-Corruption Office elaborated specific guidelines.

This development might explain why, when asked if they think anti-corruption laws are having an impact, respondents show greater optimism than the regional average of 50% (Argentina at 72%).

3. Argentina is in the category of “most developed” for compliance environment

Argentina exhibits a more mature compliance environment compared with 2016. A growing number of companies, especially multinationals, implement sophisticated compliance programmes.

A decisive factor has been the aforementioned law on Corporate Criminal Liability. This law does not oblige companies to implement such programmes, but it makes them a requirement to enter into certain contracts with the federal government.

4. Low confidence in the judicial system

Long-lasting proceedings and prosecutions in Argentina viewed as politically motivated and not reflective of a just or independent enforcement environment is not new. The prominent lack of trust in the judicial branch (87%) is a top reason for respondents not reporting corruption concerns to authorities.

5. Respondents are familiar with FCPA and Brazil’s Clean Companies Act, but UKBA is less known

89% of respondents are “very familiar” or “somewhat familiar” with the FCPA, 46% of respondents have at least some familiarity with BCCA, and about half of respondents from the major markets have no familiarity with the UKBA.

High familiarity with the FCPA can be explained by the fact that respondents’ companies currently face greater risks of being investigated under the FCPA than under the new domestic law. In particular, this is the case of multinationals. Familiarity with BCCA might be due to cooperation agreements within Mercosur. Argentina might also be looking to Brazil for lessons learnt regarding the implementation of the BCCA.

II. RECOMMENDATIONS

It is advisable for companies to implement tailored compliance programmes under Law 27,401 and extend them to their value chain, both to mitigate corruption risks and avoid reputational damage. Furthermore, in times of emergency and economic crisis, programmes are particularly relevant to keep companies’ integrity culture alive. Besides, companies should also be aware that new anti-corruption regulations have been enacted both at the federal and local government levels. Collective actions with key stakeholders are also advisable, especially for smaller companies, to strengthen transparency in the private sector.

Brazil

I. KEY FINDINGS

1. Higher perception of corruption but increased trust in the government for the fight against corruption

The findings for Brazil indicate that there has been an improvement in its anti-corruption efforts and an increased trust that the government has an important role in the fight against corruption. That is, although the country has dropped in the Corruption Ranking, according to Transparency International¹, the survey respondents showed the highest optimism level regarding the effectiveness of local anti-corruption laws (74%), with virtually 80% believing that the government will continue to have a leading role when it comes to enforcing anti-corruption laws.

Brazilian respondents also had the highest positive responses (86%) in relation to confidence around

¹ www.bbc.com/portuguese/internacional-51216388

offender prosecutions and 75% believe that the government acted when they reported knowledge of bribery, compared to 33% regionwide. Likewise, 30% said that the prosecution services/investigators in the country have minimal to no corruption, compared to 12% regionwide.

2. Brazilian companies implement more than just basic compliance programmes

Moreover, the findings showed that Brazilian companies have been implementing well developed compliance programmes, instead of merely basic policies, which might be due to the fact that the Brazilian Clean Company Act (Federal Law No. 12,846/2013) provides credit in penalty calculation for companies with adequate compliance procedures, corroborating its ability to reduce corruption within companies.

3. Brazilians are highly aware of the national and foreign regulation on anti-corruption

Another important result is that 94% of Brazilian respondents indicated that they are either “very familiar” or “somewhat familiar” with the Foreign Corrupt Practices Act, the highest-level outside of the United States. Similarly, 70% of respondents from Brazil said that they are either “somewhat” or “very familiar” with the UK Bribery Act. Regarding the Brazilian Clean Company Act, the familiarity has increased among Brazilian respondents, from 86% in 2016 to 92% having at least some familiarity in 2020. It is worth mentioning that of the 50% who said that they were “very familiar”, 85% work for multinationals or their affiliates, which might be connected to the fact that multinationals have been incorporating this legislation into their compliance training programmes.

4. The sanctions included in the Brazilian Clean Company Act are a major driver for the high level of awareness

We believe that the majority of the findings are a result of the enactment of the Brazilian Clean Company Act, which establishes sanctions to legal entities involved in corruption practices, such as fines of up to twenty percent of their gross annual revenue.

5. Operation Car Wash had a large positive impact for the perception of an improved role of the government against corruption

Operation Car Wash has also made significant strides in the fight against corruption, being considered the largest anti-corruption and money laundering initiative in the history of Brazil, exposing to the population bribery

schemes between political parties, corporate executives and state-owned companies.

II. RECOMMENDATIONS

Lastly, considering the ongoing Covid-19 pandemic and the changes made in anti-corruption legislation due to the public health emergency, we recommend that companies continue to make efforts in order to promote transparency and accountability. Besides, we also recommend that companies conduct specific risk assessments to strengthen internal controls and implement new procedures, especially regarding the sale of products and services, public procurement and donations to public entities, as well as interactions with government officials.

Chile

I. KEY FINDINGS

1. Breakthrough in Chile’s historical position as a low-corruption risk country

In previous reports, respondents ranked Chile as one of the cleanest in the region. However, this ranking has steadily declined as almost half (49%) of respondents state that corruption in Chile is a “significant obstacle” (a 27% increase since 2012). This decline is likely due to several corruption scandals in the country in recent years.

2. Changes to local anti-corruption laws generate optimism in Chile

Over the past ten years, Chile has amended its anti-corruption laws to facilitate the prosecution of companies and establish requirements and mitigation circumstances for companies’ anti-corruption compliance programmes. This development could explain greater optimism than the 50% regional average (Chile at 59%).

3. In Chile knowledge of judicial processes has decreased

The increases in knowledge observed in several countries are offset by notable decreases in Chile. A sharp decline is observed in Chile, where only 38% of respondents report knowledge of court proceedings, compared to 58% of respondents in 2016.

4. Confidence in the prosecution of offenders has declined in Chile since 2016

Chile dropped from 78% to 43%. The low level of confidence could be due to a lack of trust in the judiciary and the services of the Prosecutor's Office. The general decline in public confidence seems to have an inverse relationship with the relatively high level of knowledge (almost two thirds) of current prosecutions.

5. New laws in Chile that make a difference

Chile is among the countries that have updated their anti-corruption laws, with a high percentage of respondents stating that they perceive anti-corruption laws to be effective "to a great extent or to a moderate extent".

6. Chile is in the category of "most developed" for compliance environment

Since 2016, Chile has been ranked as one of the most developed countries. The most developed category also includes other countries that have modified their anti-corruption laws over the last decade to strengthen corporate responsibility.

7. Chile as one of the countries that will lead the way in the application of its anti-corruption laws in the next three years

A percentage of respondents in Latin America state that Chile will be one of the leading countries in law enforcement in the region. However, this view seems to contradict the responses to this year's survey from Chileans, who in turn indicate higher levels of corruption risk than in the past.

II. RECOMMENDATIONS

The draft laws amending the Chilean Criminal Code and the Corporate Criminal Liability Act and those that seek to reduce the discretion in the appointment of officials in the State, the expansion of transparency obligations and other amendments, are important initiatives and measures that have advanced in the fight against corruption.

As recommendations to reduce corruption in Chile, attention should be paid to monitoring the proper allocation and execution of resources to combat corruption, simplifying and modernising bureaucratic processes for the provision of government services, monitoring the implementation of new anti-corruption laws, promoting citizen reporting of corruption practices, and fostering a culture of integrity in public and private institutions.

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