

## Recent Developments in Latin American Anti-Corruption Enforcement

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With an increase in cross-border cooperation among Latin American enforcement authorities and a rising U.S. emphasis on coordination, companies with a global footprint face a myriad of complex risks in Latin America, including potentially large penalties in some countries that have succeeded in approving tougher anti-corruption legislation. Those governments are focusing on transparency and accountability, and are using data to fight bribery and corruption.

This article highlights several of the key developments in Latin America and the increasingly difficult compliance challenges companies may face there.

### *Cross-Border Cooperation Spreading in Latin America*

One of the most impactful recent developments in Latin America has been the increased cooperation among enforcement and regulatory authorities in the region and internationally – well beyond just between Brazil and the United States, though that relationship has grown considerably.

### *Cooperation Stemming From Lava Jato*

The multinational investigations that grew out of the Lava Jato scandal in Brazil are the clearest example of cross-border cooperation and information sharing in the region. While cooperation between Brazil and the United States on anti-corruption investigations certainly predates Lava Jato, working together on the Petrobras scandal has significantly strengthened the relationship between the two countries, and many FCPA actions have resulted from Brazilian cooperation. In fact, in May 2017, a senior DOJ official [proclaimed that](#) “Brazil has become one of the U.S. Justice Department’s closest allies in the fight against corruption.” And in July 2017, another top DOJ leader [said](#), “It is hard to imagine a better cooperative relationship in recent history than that of the United States Department of Justice and the Brazilian prosecutors.”

Lava Jato-related cooperation extends beyond Brazil and the United States. For example, in the summer of 2018, Argentina and Brazil reached an agreement that allows Brazilian prosecutors to share evidence obtained through Lava Jato of bribes paid to Argentine officials. In August 2018,

the Argentine Ministry of the Attorney General made the first request to Brazil seeking evidence under the agreement.

The fallout from Lava Jato doesn’t end there. In Peru, the Office of the Attorney General formed a special team to investigate allegations of corruption. In November 2018, after a judge retained his passport, former President Alan García sought asylum in Uruguay’s diplomatic mission while a corruption investigation continues but in December 2018, President García’s asylum request was denied. The decision was announced by Uruguay’s President Tabaré Vázquez, who disagreed with García’s argument that he was the victim of political persecution. The scandal has also arguably shown its effects in Colombia, where the country’s former anti-corruption director and an ex-president of the Supreme Court, among other officials, have been swept up in prosecutions.

An investigation in Bolivia potentially stemming from the scandal further underscores the broad geographic scope of the investigation and the need for continued cross-border cooperation.

See [“Recent Court Decision Underscores Importance of Not Unreasonably Blacklisting Third Parties in Brazil”](#) (Dec. 12, 2018).

### *Other Regional Cooperation Initiatives*

While the Lava Jato investigation is often cited as paradigmatic of cooperation in regional enforcement to date, other regional initiatives are also advancing this trend. The commitment to regional collaboration was perhaps most prominently highlighted at the Eighth Summit of the Americas held in April 2018 in Lima, Peru. There, various heads of state in the region signed the [Lima Commitment](#), a declaration that consists of 57 sections dedicated to, among other things:

- protecting public officials, including those involved in law enforcement and the investigation, prosecution, and punishment of acts of corruption;
- promoting the adoption and/or strengthening of such legislative measures as are necessary to criminalize acts of corruption; and

- promoting, among competent authorities, the use of flexible mechanisms for exchanges of information, cooperation, and coordination in the investigation and prosecution of acts of corruption.

This follows the implementation of the Brasilia Declaration for International Judiciary Cooperation in 2017, which was signed by several countries – including Argentina, Brazil, Colombia, Chile, Dominican Republic, Ecuador, Mexico, Panama, Peru and Venezuela – and called for additional cross-jurisdictional cooperation in bribery, money laundering and corruption investigations involving government officials. The full impact of these measures remains to be seen, but the vocal, prominent commitment by multiple jurisdictions in the region to anti-corruption is unprecedented and already having effects.

#### ***Other U.S. Efforts in the Region***

U.S.-Latin American cooperation is not limited to just Brazil and takes many forms. In Costa Rica, for example, the U.S. Bureau of International Narcotics and Law Enforcement Affairs kicked off a project in October 2018 to strengthen the local judicial branch's anti-corruption capacity. This effort so far has included a delegation of the Costa Rican judicial branch visiting Santiago, Chile, to exchange best practices and discuss the creation of a new ethics code and internal control mechanisms with the President of the Chilean Supreme Court, anti-corruption prosecutors and other officials.

#### ***Challenges and Successes in Anti-Corruption Legislative Reform***

When it comes to combatting corruption, Latin America is a region of strong contrasts. While several countries in Latin America have made strides in fighting corruption, others still have a long way to go. For example, Guatemala's president recently came under fire for suspending a U.N. anti-corruption commission leading several investigations in the country. In addition, Colombia recently fell short of votes to pass a referendum increasing penalties for corruption and decreasing politician salaries, including those of legislators.

On the other hand, many leaders in Latin America have verbalized a commitment to anti-corruption efforts and have enacted legislation to back up the rhetoric. A failure to understand and comply with new laws in countries such as Peru and Argentina could result in severe consequences.

#### ***A New Law in Peru***

Peruvian Law 30424, which came into effect in January 2018, provides for corporate criminal liability for violations relating to public corruption and can result in serious civil penalties. Law 30424 also provides for potential suspension and dissolution of companies involved in a violation. In addition, corporate fines under the law range from two-to-six times the amount of the undue benefit received or expected to be received, or, when the benefit cannot be quantified, an amount determined by the company's annual income.

See "[How the Continued Political Fallout From the Odebrecht Scandal Is Affecting Anti-Corruption Efforts in Latin America \(Part One of Two\)](#)" (May 30, 2018); [Part Two](#) (Jun. 13, 2018).

#### ***Argentinian Reforms***

Argentina introduced a similar measure in 2018. Law 27.401, which took effect in March 2018, provides for corporate liability for criminal offenses involving domestic or international bribery and applies to both foreign and domestic companies. The law even provides for vicarious liability at the corporate level for offenses committed by third parties who simply act in a company's interest or for its benefit. Similar to its Peruvian counterpart, Law 27.401 imposes corporate fines of two-to-five times the undue benefit and provides for debarment, suspension and possible dissolution.

Both the Peruvian and Argentinian laws, however, allow for mitigating factors to reduce penalties, and even permit companies to avoid fines altogether if they take specific compliance and reparative actions.

See "[Government Enforcers From Argentina, Brazil and the U.S. Discuss Recent Victories](#)" (Aug. 8, 2018).

#### ***Uruguay's Updates***

Uruguay, meanwhile, passed legislation in December 2017 to consolidate and augment various laws and regulations against money laundering and terrorism financing. Among other enhancements, Law 19,574 created a new Coordinating Commission Against Money Laundering; extended suspicious activity reporting obligations to additional categories of persons and entities, including attorneys, accountants and public notaries; and added tax fraud as a predicate offense to money-laundering charges.

### **Costa Rica's Strides**

Costa Rica, which has Transparency International's best corruption rating in Central America, has also made key strides in furthering its anti-corruption and transparency efforts. The country has recently taken steps toward successful integration into the OECD, including updating an agreement for exchanging tax information with the United States to meet OECD standards. It has also enhanced and stepped up enforcement of its Law Against Corruption and Illicit Enrichment in Public Service, an anti-corruption law implemented in 2004 and updated in 2016.

This law will likely prove key in the "Cementazo" Investigation, which began in 2017. That investigation centers on allegations that several Costa Rican business executives exerted pressure on local politicians in connection with the approval of a multi-million-dollar loan to a local company to allow it to import cement from China. The investigation has already resulted in the resignation of the President of Costa Rica's Supreme Court in July 2018 and the reprimand of him and three other justices for their roles in exonerating certain legislators involved in the investigation, despite evidence implicating the legislators in the scandal.

See "[Regional Risk Spotlight: Ongoing Investigations and Updated Laws in Costa Rica](#)" (Sep. 19, 2018).

### **Mexico's Efforts**

In addition to legislative efforts, some countries are also targeting broader reform as part of an overall effort to change cultural approaches to corruption. In Mexico, for example, incoming President Andrés Manuel López Obrador focused extensively on rooting out corruption as a key component of his electoral platform, though it is yet to be seen how this will affect anti-corruption enforcement and policy in the country in years to come. Until now, Mexico has been slow to fully implement its National Anti-Corruption System and enforce related laws passed over the last three years.

See "[Staying Up-to-Date on the Slow Implementation of Mexico's Anti-Corruption Legislation](#)" (Jan. 10, 2018).

### ***The Importance of Data in Fighting Corruption and Ensuring Transparency***

Those conducting business in Latin America should also consider how the use of data may change the manner in which companies share information with government agencies, as

certain Latin American countries are focusing on using data to increase government accountability and transparency in the fight against corruption. For example, the Lima Commitment, discussed above, advocates:

promoting and or strengthening the implementation of national policies and plans, and as appropriate subnational plans in the areas of open government, digital government, open data, fiscal transparency, open budgeting, digital procurement systems, public contracting and a public registry of state suppliers, considering towards that end the participation of civil society and other social actors.

The Commitment similarly calls for establishing an Inter-American Open Data program to "strengthen open information policies and increase the capacity of governments and citizens to prevent and fight corruption."

In addition, Brazil's Comptroller General Office also continues to maintain the Observatório da Despesa Pública (Public Spending Observatory), which is designed to check for irregularities in government spending to fight corruption, as well as the [Budget Transparency Portal](#), which was created to "increase fiscal transparency" through making available "open government budget data."

Brazil's new General Data Protection Law – which takes effect in early 2020 and has a broad extraterritorial reach – will soon be another consideration for companies conducting internal investigations or cooperating with authorities when data subject to the law is involved.

Moreover, at the same time that countries in Latin America appear to be increasingly focused on optimally using data, U.S. authorities, including both the DOJ and the SEC, have also increasingly relied on utilizing data in connection with detecting and rooting out fraud in a variety of investigations.

See "[Understanding the Intersection of Law and Artificial Intelligence](#)" (May 30, 2018).

### **Technology in Investigations**

In addition to data, new forms of technology, including advanced forms of AI and blockchain, will very likely play a role in future investigations, to track financial flows, increase transparency in government contracts with private companies, strengthen open access to government information and bolster investigations into corruption and bribery. For instance, a consortium of civil society and the private sector in Brazil announced plans in September 2018 to launch an open

data online platform that will use AI and blockchain to monitor and analyze public bidding data to increase transparency and identify possible corruption.

### ***The Observ Institute***

The Observ Institute, an independent non-profit organization, is a unique initiative that has the potential to be a powerful tool in the fight against corruption because it relies on private funding and seeks to monitor bidding across the federal, state, and municipal levels.

It was conceived with initial support from Odebrecht, the Brazilian construction behemoth that concluded a Lava Jato leniency agreement requiring the company to participate in anti-corruption projects. Including the requirement to support such initiatives in the Odebrecht agreement demonstrates Brazil's commitment to embracing a holistic approach to leniency agreements that offers entities with a history of misconduct a chance to contribute positively to systemic change.

Though it will take time to assess the impact in Brazil and the region more broadly, Observ's launch is a promising development in the evolving trend toward greater transparency and reduced public corruption.

### ***Using Data to Inform Compliance***

With these new enforcement tools in mind, entities conducting business in Latin America should be aware that regional authorities may increasingly focus on using reported and publicly available data to monitor financial transactions, including irregularities in payments to government officials, particularly in the context of government contracts.

By the same token, the use of data should inform a company's internal compliance functions, including, for example, ensuring that transactional data is properly maintained and audited to mitigate the risk of violating anti-corruption laws. Furthermore, if a company is subject to investigation, preserving and auditing existing data will prove key to both mitigating future violations and building a defense in response to an active, cross-border investigation.

See "[Real Risks, Artificial Intelligence: The Next Wave of Anti-Corruption Compliance?](#)" (Feb. 21, 2018).

### ***Conclusion***

In light of these broad-ranging developments, companies operating in Latin America should continue to assess their compliance programs to ensure they adequately address the evolving regional challenges. Moreover, given the increase in cooperation and coordination in the region, any compliance program should take into account the possibility that a violation of law in one country may have serious spillover effects into others in the region.

Finally, technology and data will likely form a significant part of cross-jurisdictional enforcement efforts in the region moving forward, just as they have in the United States, and the importance of reflecting that change through data management will inform any successful approach to compliance and any specific responses to future investigations in the region.

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