

# CORONAVIRUS INFORMATION & UPDATES

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## Ensuring Compliance as Usual Even Without Business as Usual in Latin America

Latin America declared its first confirmed case of COVID-19 approximately two months ago.<sup>1</sup> Since then, anti-corruption and anti-bribery compliance risks in the region have mounted. Various factors combine to increase the probability of misconduct—including changes to the procurement process and intense supply chain pressures. Large government relief efforts with relaxed oversight also create opportunities for further exploitation in the allocation and use of public funds.

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Companies operating in Latin America, a region already at high risk for bribery and corruption, should be particularly vigilant to the increased compliance risks brought on by the pandemic. The region is predicted to be one of the hardest hit of the world, with weak social services and widespread poverty rendering it particularly susceptible to the spread of COVID-19.<sup>2</sup> Additionally, while some scientists hope the Northern Hemisphere's summer may slow the spread of the disease, the Southern Hemisphere cannot look forward to such a possibility in the near term.<sup>3</sup>

As we discussed [previously](#), humanitarian crises are fertile grounds for corrupt behavior and have consistently been the subject of intense government enforcement efforts in the past. Over the next several months, companies doing business in Latin America will be best served by compliance teams that stay attuned to ongoing developments and act nimbly in response to shifting risks. Preventative measures taken now can limit the likelihood of litigation and enforcement exposure that lasts well after the health crisis has subsided. This alert offers recommendations for how to mitigate these unique risks.

### Areas of increased risk

As the response to COVID-19 takes shape and businesses adapt, certain areas will be facing increased risk. In particular, the procurement process and supply chains are two areas that companies should monitor closely. In fact, just weeks into the response, we are already seeing reports of corrupt behavior related to these areas.

<sup>1</sup> Alfonso J. Rodriguez-Morales et al., *COVID-19 in Latin America: The implications of the first confirmed case in Brazil*, Travel Med. Infect. Dis. (Feb. 29, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7129040/>.

<sup>2</sup> José María León Cabrera and Anatoly Kurmanaev, *Ecuador Gives Glimpse Into Pandemic's Impact on Latin America*, NY Times (Apr. 8, 2020), available at <https://www.nytimes.com/2020/04/08/world/americas/ecuador-coronavirus.html>; John Emont, *Will Warmer Temperatures Bring a Coronavirus Reprieve? It's Complicated*, Wash. Post (Apr. 13, 2020), available at <https://www.wsj.com/articles/will-warmer-temperatures-bring-a-coronavirus-reprieve-its-complicated-11586792719>.

<sup>3</sup> Jason Beaubien, *Will Summer Slow the Spread of COVID-19? Scientists Try to Figure it Out*, NPR (Apr. 9, 2020), available at <https://www.npr.org/sections/goatsandsoda/2020/04/09/830297538/scientists-try-to-figure-out-if-summer-will-slow-the-spread-of-covid-19>.

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## *Government procurement*

Government procurement is always an area of potential corruption risk. But that risk is exponentially magnified as the pandemic creates urgent demand by governments seeking to stem the ravaging impact of the virus and quickly obtain medical supplies, food, and other necessities. In the United States alone, estimates of health care costs over the next two years related to the crisis are as high as \$556 billion.<sup>4</sup> Beyond health care, governments across the world are expected to inject more than \$10 trillion into the economy, more than four times the response of the G20 countries to the 2008 financial crisis.<sup>5</sup>

The first clear signs of potential COVID-19-related corruption in this area came in February 2020, when Brazil enacted Federal Law No. 13,979 that eased its bidding procedures for the acquisition of goods, services, and inputs related to the public health emergency. That provision was later amended by Provisional Measure No. 926, of March 20, 2020.<sup>6</sup> According to the new legislation, the government may enter into contracts with companies previously declared unfit or suspended from contracting with the Government and participating in the public bidding process. Post-award changes (additions or deletions) to labor, services, and acquisition contracts can now be up to 50% of the contract value instead of the 25% originally provided for in the public bidding law. The legislation also eliminated the requirement for preliminary studies for common goods and services and exempted services and engineering contracts worth more than R \$ 150 million from the requirement for public hearings for tenders.<sup>7</sup>

Transparency International (“TI”) has raised concerns regarding the effect of these emergency measures in Brazil.<sup>8</sup> TI noted that supply contracts for surgical masks worth approximately \$7.5 million were awarded to a company offering the masks at a price that was 67% higher than a competitor. Moreover, the company had no prior experience in furnishing medical supplies to the government. In another example, the Ministry of Health entered into an approximately \$137

<sup>4</sup> Michael Cohen, Ksenia Whittal, Tim Murray, *COVID-19 Cost Scenario Modeling: Estimating the Cost of COVID-19 Treatment for U.S. Private Insurers*, (Mar. 30, 2020), available at <https://www.ahip.org/wp-content/uploads/AHIP-COVID-19-Modeling.pdf>.

<sup>5</sup> Ritvik Carvalho and Tommy Wilkes, *Cash handouts and bond buying: \$10 trillion-plus deployed against virus*, Reuters (Mar. 27, 2020), available at <https://www.reuters.com/places/africa/article/us-health-coronavirus-cenbanks-graphic/cash-handouts-and-bond-buying-10-trillion-plus-deployed-against-virus-idUSKBN21E38K>; *A Review of Global Fiscal Stimulus*, International Labour Organization and International Institute for Labour Studies (Nov. 16, 2011) available at [https://www.ilo.org/inst/research/addressing-crisis-challenges/discussion-paper-series/WCMS\\_194175/lang--en/index.htm](https://www.ilo.org/inst/research/addressing-crisis-challenges/discussion-paper-series/WCMS_194175/lang--en/index.htm).

<sup>6</sup> Lei No 13.979, Art. 4, de 6 de Fevereiro de 2020, Diário Oficial da União [D.O.U.] de 7.2.2020 (Braz.), available at [https://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2020/lei/113979.htm](https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/113979.htm).

<sup>7</sup> Tibério de Araújo Coutinho Madruga, *Coronavírus: impacto em contratos e licitações*, Tribuna do Norte (Apr. 10, 2020), available at <http://www.tribunadonorte.com.br/noticia/coronava-rus-impacto-em-contratos-e-licitaa-a-es/477178>.

<sup>8</sup> *Corruption Could Cost Lives in Latin America’s Response to the Coronavirus*, Transparency International (Mar. 31, 2020), available at [https://www.transparency.org/news/feature/corruption\\_could\\_cost\\_lives\\_in\\_latin\\_americas\\_response\\_to\\_the\\_coronavirus](https://www.transparency.org/news/feature/corruption_could_cost_lives_in_latin_americas_response_to_the_coronavirus); Hyury Potter, *Coronavírus: Sem Licitação, Mandetta Paga 67% Mais Caro Para Comprar Máscaras de Empresa de Bolsonaroista*, The Intercept\_Brasil (Mar. 22, 2020), available at <https://theintercept.com/2020/03/22/mandetta-mascaras-bolsonarista-coronavirus>; Constança Rezende, *Mandetta contrata empresa ligada a sua campanha para combate ao coronavírus*, UOL (Mar. 19, 2020), available at <https://noticias.uol.com.br/colunas/constanca-rezende/2020/03/19/mandetta-contrata-empresa-ligada-a-sua-campanha-para-combate-ao-coronavirus.html>.

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million contract for uniforms and protective equipment with a company whose owner had previously made significant donations to the congressional campaigns of the current Minister of Health totaling approximately \$30 million.

And Brazil is not the only country where suspicious procurement activity related to the pandemic has already been identified. This month, Mexico's Social Security Institute contracted with a supplier to provide 2,500 ventilators for \$93 million. However, the owner of the company supplying the ventilators has been reported to have been convicted for creating a ghost company to deceive U.S. investors and has also been linked to another attempted fraud against Pemex, the state-owned petroleum company.<sup>9</sup> Additionally, the contract did not specify the brand and model of the devices or a date of delivery.<sup>10</sup> These two examples—identified only weeks into the crisis—underscore that the pandemic is creating a powder keg for potential corruption and fraud in government procurement.

## *New supply chain pressures*

In addition to risk in the procurement process, risks surrounding the purchasing and supply of goods have increased due to a perfect storm of low supply, high demand, urgent need, and border restrictions. Corrupt behavior in this area can come in many forms, including bribery, customs violations, price gouging, and counterfeit products. To cite just one example, Interpol recently announced a 90-country operation to stop the sale of fake medicines and medicinal products related to COVID-19. The operation resulted in 121 arrests and the seizure of pharmaceuticals worth more than \$14 million.<sup>11</sup>

Further exacerbating these problems, supply chain issues may hit the fragile economies of Latin America harder than other regions. Globally, there have been more than 80 restrictions on medical exports and 40 countries have implemented outright bans on the export of certain drugs, pharmaceutical ingredients, or medical equipment.<sup>12</sup> Further, wealthier nations in North America and Europe have been able to outbid less fortunate countries for supplies. As a result, Latin American scientists are facing months-long delays in obtaining testing supplies, and shortages are already resulting in patient samples going untested.<sup>13</sup> The World Bank, recognizing these risks, has already committed \$270 million to Latin American and Caribbean countries to aid in the crisis and address supply chain issues.<sup>14</sup> Despite its good intent, this

<sup>9</sup> Raúl Olmos, *Sancionado en EU y México, dueño de empresa que vendió ventiladores al IMSS*, Animal Politico (Apr. 8, 2020), available at <https://www.animalpolitico.com/2020/04/sancionado-en-eu-y-mexico-dueno-de-empresa-que-vendio-ventiladores-al-imss/>.

<sup>10</sup> Galia García Palafox, *Cuestionan Compra De Ventiladores Pulmonares Del IMSS*, Mexicanos Contra La Corrupción y la Impunidad (Apr. 7, 2020), available at <https://contralacorrupcion.mx/ventiladores-imss-covid-19/>.

<sup>11</sup> *Global operation sees a rise in fake medical products related to COVID-19*, Interpol (Mar. 19, 2020), available at <https://www.interpol.int/en/News-and-Events/News/2020/Global-operation-sees-a-rise-in-fake-medical-products-related-to-COVID-19>.

<sup>12</sup> Jason Douglas, *As Countries Bar Medical Exports, Some Suggest Bans May Backfire*, Wash. Post (Apr. 4, 2020), available at <https://www.wsj.com/articles/as-countries-bar-medical-exports-some-suggest-bans-may-backfire-11585992600>.

<sup>13</sup> Jane Bradley, *In Scramble for Coronavirus Supplies, Rich Countries Push Poor Aside*, NY Times (Apr. 9, 2020), available at <https://www.nytimes.com/2020/04/09/world/coronavirus-equipment-rich-poor.html>.

<sup>14</sup> *World Bank's Response to COVID-19 (Coronavirus) In Latin America & Caribbean*, World Bank (Apr. 2, 2020), available at <https://www.worldbank.org/en/news/factsheet/2020/04/02/world-bank-response-to-covid-19-coronavirus-latin-america-and-caribbean>.



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influx of cash increases corruption risk as the fast-tracking and immediate disbursement of funds leaves less time for proper diligence and compliance procedures.

On the ground, there are already reports of corruption issues along the supply chain and inquiries by enforcement agencies into improper behavior. In Colombia, the Attorney General has created a task force covering the health sector that has already opened investigations into the delay of goods delivery, overpricing, and overpayment for products, while monitoring 2,000 additional government contracts.<sup>15</sup>

Based on these issues and the well-publicized focus by enforcement bodies on COVID-19-related fraud, both U.S. and in-country regulators will expect companies operating in Latin America to take affirmative steps to ensure compliance with anti-corruption laws connected to their supply chains despite these challenging times.

## How to preserve a culture of compliance

Compliance teams can take steps to mitigate these risks proactively while still responding promptly to the urgent needs and economic pressures created by the pandemic. Companies can preserve a culture of compliance by re-evaluating risks and processes, enhancing employee engagement and training, and taking additional precautions when dealing with third parties, including the government.

### *Evaluate changes in risk*

Given the unprecedented circumstances created by COVID-19, it is important to engage in a risk re-evaluation process to determine which compliance processes and procedures are in need of adjustment. The risks facing your business have likely changed significantly, and the policies and procedures your company developed in the past likely need to quickly adapt as well. Pay particular attention to government interactions, and note where the stressors lie in procurement and your supply chain. Overall, when evaluating risks, consider increased interaction with the government, new needs for expediency, and logistical or operational challenges caused by social distancing and limited travel.

### *Engage with, train, and set the tone for your employees*

As we continue to observe social distancing, constant communication with business counterparts and employees is key. Compliance education—for example, via online training—and frequent refreshers on policies are essential, especially as workforces are more isolated than ever before. Be sure to evaluate which employees' responsibilities may have changed during the crisis and be aware of any employees new to interacting with third parties or the government. Companies should also arrange statements from leadership regarding the importance of compliance in the face of the crisis and implement or promote compliance reporting channels to keep employees engaged.

### *Document, document, document*

<sup>15</sup> *Investigan sobrecostos de hasta el 71 % en compra de camas o comida*, El Tiempo (Apr. 8, 2020), available at <https://www.eltiempo.com/justicia/investigacion/investigacion-sobrecostos-en-contratos-de-comida-salud-y-aseo-por-coronavirus-482728>; *A la corrupción en Colombia no le da miedo el coronavirus*, Portafolio (Apr. 9, 2020), available at <https://www.portafolio.co/economia/noticias-coronavirus-corrupcion-en-tiempos-de-coronavirus-539784>.

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Documentation is key. In the event of a future investigation, regulators will expect to see documentation of steps taken during this high-risk time to address risks and make any adjustments to your typical processes. Should you decide to deviate from standard procedure, make sure the process is well documented and any plans for follow-up and mitigation are carried out.

## *Support the gatekeepers*

Gatekeepers, such as finance personnel, serve an essential function during a crisis, as the SEC and DOJ have both made clear in previous statements.<sup>16</sup> Personnel involved in payments and approval processes should be encouraged and given suitable resources to carefully examine suspicious payments and third parties. In particular, gatekeepers should check that any expenditures are appropriate and match written contracts or other payment terms; insist that any new vendors, consultants and agents have been properly vetted or exceptions appropriately approved; and verify that a legitimate business purpose exists for any unusual or large payments.

## *Focus on third-party and government relationships*

Re-evaluating third-party and government relationships is also important to allow companies to assess parties who may now carry a higher risk. Ask questions of your higher risk business counterparts to ensure you mitigate those risks.

- Which third parties operate in industries or regions likely to be hardest hit by the crisis?
- Are bids inconsistent with market rates?
- Are claims that they can continue to meet demand reasonable given supply chain pressures?

This is also a good time to remind third parties about their contractual anti-corruption obligations or to ask for updated compliance certifications. In entering into third-party contracts during the crisis, be wary of unusual payment terms, an unwillingness to provide documentation, or unexplained sources of a bulk supply. When dealing with the government, be aware of the increased corruption risks and be sure to fully review requests for donations, monitor new procurement requirements, and fully vet government contracts.

## **Can it really be compliance as usual?**

For individuals, businesses, and governments, the past several weeks have been defined by crisis, uncertainty, and unprecedented risks to business and people, both from an economic and health perspective. Compliance programs exist to limit the increased legal risks that these developments pose to a company's business and personnel. Given the unprecedented challenges businesses face, compliance programs will be put under tremendous pressure, whether to move faster or to do more with less given the economic issues created by the pandemic. While companies may be tempted to cut corners during this crisis, businesses that successfully weather this storm will focus their efforts on quickly assessing the new risk environment created by the pandemic and appropriately tailoring available resources to protect their business, their reputation, and their people.

<sup>16</sup> See, e.g., *Evaluation of Corporate Compliance Programs*, U.S. Department of Justice, Criminal Division (Apr. 2019), available at <https://www.justice.gov/criminal-fraud/page/file/937501/download>.