

CEP Magazine – October 2019

Compliance program implementation and management in Brazil

By Natalia Gindler Corsini

Natalia Gindler Corsini (ncgindler@gmail.com) is a corporate compliance professional who has worked for several Fortune 500 companies and is based in Miami, Florida, USA.

Recently I had the pleasure of attending a world-class program in the area of compliance, which covered managing compliance in multiple countries. It was such a unique event, with experienced compliance professionals (panelists and attendees) exchanging their knowledge, practices, and challenges.

One of the points of the program focused on managing compliance in Latin America. Throughout the discussion, the panelists highlighted specific examples to show how each country in the region can differ. Although the essence of the region may look similar at first glance, every country in Latin America is characterized by different cultures, originating from different histories of colonization (e.g., by Spaniards and by Portuguese); by distinct political and economic environments; and by populations with diverse types of mind-sets. These differences across the region present unique challenges for a global company implementing and establishing compliance programs in Latin America. It is important to keep in mind that one size does not fit all.

The Brazilian mind-set

I wasn't surprised by how many times Brazil was cited during the program; not only because of all the negative exposure related to corruption and the country's positive reactions, but also because of the way the Brazilian mind-set works. I could hear, like echoes from the past, concerns I experienced when implementing compliance programs in Brazil.

Establishing procedures, controls, and audit and monitoring processes in my home country of Brazil is not an easy task. I had the opportunity to work in many Latin American countries, to know their cultures, and to initiate compliance programs there. However, Brazil has its own unique issues. It is customary in Brazil to extemporize solutions to resolve problems; however, this is done not through procedures and previously established rules, but through behaviors passed down through the centuries, from one generation to the next. Such behaviors come from political and social conditions, imposed centuries ago, that have created among Brazilians a dislike for following rules and even laws.

Between 2012 and 2013, IPCA Brasil (Perception of Legal Compliance Index), measured by Fundação Getúlio Vargas School of Law of Sao Paulo,^[1] evaluated how important it is for Brazilians to obey or not to obey laws as well as some authorities in Brazil. The results of the research revealed that 82% of the population considered it easy to disrespect the laws of the country, and 79% agreed that, whenever possible, improvised solutions can be used to solve problems instead of following rules and legal procedures.

In Brazil, for decades, there has been an accepted state of amorality among the population—people acting wrongly; disregarding laws and rules; and using the fallacious argument that everybody does it, so it should be considered normal and harmless. Subsequently, if one doesn't do it, he/she is considered to be not a smart person. This rationalization is used to further justify that an individual can be absolved from an illegal act if the population collectively commits the same illegal act. By applying this mentality to the corporate environment,

the rationale used to be, “If we don’t do this, or if we comply with the rules and laws strictly, then there is no way to be competitive, and we will lose business, which will be reflected in our P&L.”

Living in that environment while working for a global company with the mission to implement a compliance program based on foreign laws and regulations can be a gigantic challenge. There is always someone who will ask the classic question: “Why, in Brazil, am I supposed to follow rules imposed by another country?”

I was fortunate to be able to address these challenges and answer this type of question in my role as a compliance officer. My first assignment in compliance was to implement the export control program in Latin America, based on the laws and regulations of the United States, which have an extraterritorial reach. It would be irresponsible of me to only check the boxes, disregarding how profoundly the concept of the program would touch the employees. I had to ensure they understood the importance of adhering to the procedures in order to mitigate any negative exposure that the company and the individuals might face if they did not comply.

With the full support of corporate headquarters, I was equipped with all the information I needed about the Export Compliance Program (ECP), based on the Bureau of Industry and Security principles and guidelines,^[2] to reproduce it in my country. Basically the program consists of eight elements that are critical for an effective ECP for items subject to the Export Administration Regulations:

1. Management commitment
2. Risk assessment
3. Export authorization
4. Recordkeeping
5. Training
6. Audits
7. Handling export violations and taking corrective actions
8. Building and maintaining the ECP

This document is only available to members. Please log in or become a member.

[Become a Member](#) [Login](#)