New data reveal the growth of compliance in Latin America

By Alejandra Montenegro Almonte and James Tillen

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A perennial challenge for chief compliance officers (CCOs) is assessing corruption risk in their companies' countries of operation. Many CCOs turn to Transparency International's Corruption Perception Index (CPI), which annually ranks countries based on the perceived levels of corruption in their public sector generally. Companies use CPI scores to determine what amount of due diligence to conduct on a third party, what locations to audit, what employees to train, and whether to enter into a new market. Yet a CPI score does not tell the whole story for a particular country, and overreliance on the CPI can lead companies to miss specific risks or focus too many resources on low-risk areas.

With this challenge in mind, our firm, in partnership with several law firms across Latin America, began conducting a corruption survey of the countries in the region every four years to provide CCOs with more detailed corruption data to help organizations assess and address particularized risks within each jurisdiction. The 2020 survey[1] yielded important information about the changing corruption landscape in the region that CCOs will find useful in making risk-based decisions related to the region. It additionally assessed anti-corruption compliance practices, which can help CCOs benchmark their programs and determine where compliance concepts are accepted and where more efforts may be required to implement effective compliance components.

Ranking government corruption

Understanding the corruption risks of the countries in which businesses operate is the starting point to an effective anti-corruption compliance program, so the survey asked the respondents to evaluate corruption in countries within the region. Consistent with CPI results, respondents viewed corruption as a significant obstacle in multiple countries, including Venezuela, Nicaragua, Honduras, and Ecuador. The majority of respondents viewed corruption as an insignificant obstacle in Uruguay, Chile, and the United States. It should be noted that while conducting the survey, the continued instability in Venezuela made it difficult to obtain reliable data from respondents in the country. While respondents from other countries numbered in the dozens and Venezuelan respondents actively participated in our prior surveys, only eight people in total from Venezuela responded in 2020. Because of these low numbers, we were unable to include the results for Venezuela in assessing responses to most of the questions. Notably, respondents in other countries overwhelmingly ranked Venezuela as the most corrupt country surveyed in the region.

Respondents also evaluated corruption in nine specific areas of government within their countries: executive branch, legislative branch, judicial branch, customs, prosecution service or investigators, police, municipal/local authorities, political parties, and state-owned companies. These questions were designed to help CCOs better understand whether corruption risk varies within a country's government and, if so, where that risk is most heightened. This breakdown of corruption risk by government areas can be leveraged by CCOs to help guide risk assessments of their own operations. For example:

- Companies importing into multiple countries in the region will be interested in knowing the percentages of respondents who viewed **customs authorities** in particular countries as "significantly corrupt." Colombia (82%), Argentina (76%), and Nicaragua (75%) achieved the highest percentages, and Chile (22%) and the United States (25%) received the lowest percentages of the countries evaluated. CCOs may also be interested in understanding where their risk profile may have shifted in the last four years. Although in 2020 Argentina and Chile are at different ends of the corruption risk spectrum, when compared to the 2016 results, it's apparent that these countries were heading in different directions: Argentina's risk profile improved from 91% to 76%, while Chile's risk profile increased from 8% to 22%.

- Companies contracting with **state-owned companies** in Ecuador (81% respondents viewed them as significantly corrupt) and Colombia (77%) should be more concerned about the corruption risk associated with those relationships than companies contracting with state-owned companies in the United States (25%), Chile (32%), and Costa Rica (37%).

- Companies facing litigation or criminal actions in the region can evaluate risks in dealing with **prosecution services or investigators**—viewed as most corrupt in Mexico (77%) and Bolivia (74%)—and **the judiciary**—viewed as most corrupt in Nicaragua (94%) and El Salvador (86%).

- Finally, companies that interact often with local **police** in the course of their operations would benefit from understanding that respondents viewed the police in the following countries as significantly corrupt: Mexico (88%), Peru (85%), and Bolivia (85%).

These specific data points have become more relevant to CCOs in light of the recent U.S. Department of Justice (DOJ) update to its *Evaluation of Corporate Compliance Programs* guidance,[2] in which it stresses that companies should conduct risk assessments that help identify particularized corruption risks.

Compliance is making headway—but still lags for some

Data on compliance programs were collected on a country-by-country basis and also by company type—namely public vs. private companies and multinational vs. regional companies—making the data more useful for organizations benchmarking against companies with similar operational footprints and corporate structures. While respondents from multinational and publicly traded companies continue to lead the path in compliance, a growing number of regional and private companies have made meaningful strides in their own compliance programs in the last four years. For instance, both multinationals and local/regional companies have shown an upward trend in the following key categories: full-time compliance personnel (38% of local/regional companies and 77% of multinationals); anti-corruption assessments and audits (46% of local/regional companies and 71% of multinationals); third-party due diligence policies (49% of local/regional companies and 81% of multinationals); and monitoring of third parties (31% of local/regional companies and 54% of multinationals). These data points indicate that compliance is becoming increasingly embedded in the fabric of Latin American businesses and should encourage CCOs to continue their pursuit to strengthen their own company's programs.

As indicated above, the survey additionally asked respondents questions regarding the specific steps their companies take to reduce corruption, including which elements of a compliance program their companies have implemented (e.g., anti-corruption training and policies; procedures for gifts, travel, and entertainment for government officials; mergers and acquisitions due diligence; anonymous reporting mechanisms; full-time compliance personnel; and monitoring of third parties). Overall, the data indicate that while an increased number of companies in the region have embraced a wide range of anti-corruption compliance program elements, several countries continue to lag behind, creating a divergence in compliance program maturity between "Most Developed" and "Least Developed," with only two countries (Guatemala and Honduras) in the

“Developing” category (Figure 1). Understanding the maturity of compliance programs in specific countries may help CCOs benchmark their own programs against country-specific practices and expectations.

Figure 1: Country-specific compliance program environments

Most Developed	Developing	Least Developed
Argentina*	Guatemala*	Bolivia
Brazil	Honduras*	Dominican Republic
Chile*		Ecuador
Colombia		El Salvador
Costa Rica*		Nicaragua
Mexico		Panama
Peru*		Paraguay
United States		
Uruguay*		

** Moved up since the 2016 survey. Due to the small number of total responses received from Venezuela, the country was excluded from this ranking.*

This benchmarking is particularly important for CCOs operating in Latin American countries that have adopted anti-corruption laws with compliance program expectations, such as Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, and Peru. Respondents from these countries report the most developed compliance programs in the region, exceeding the regional average in every category included in the survey. In addition to benchmarking, it is important for CCOs to understand the compliance requirements in the laws and how they compare to other standards that may be applicable to their companies, such as expectations of the DOJ and Securities and Exchange Commission found in the *Resource Guide to the U.S. Foreign Corrupt Practices Act, Second Edition*.[3]

Understanding the compliance landscape in specific countries and by type of company may also help CCOs anticipate challenges in the application of their programs, such as identifying third parties and joint venture partners that may be more or less likely to understand and accept due diligence requirements and compliance expectations in contract terms. Similarly, CCOs may be able to anticipate which acquisition targets are more likely to have existing compliance programs that are addressing risks. Lastly, by using these data, CCOs may be able to identify which subsidiaries may be more accepting of training, hotlines, and other program components and, conversely, where more effort will be required to embed such elements.

Armed with more knowledge

Corruption challenges in Latin America are diverse and ever-changing, posing many challenges to CCOs administering compliance programs in the region. The data set from the 2020 Latin America Corruption Survey has provided a starting point for CCOs to identify risk regionally and within countries. With this information, CCOs may be able to more effectively benchmark and anticipate issues when implementing their compliance program.

About the authors

Alejandra Montenegro Almonte’s practice focuses on internal corporate compliance, internal investigations, and government enforcement actions across a variety of business-critical areas, including anti-corruption, internal controls, and other ethics and compliance violations.

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Takeaways

- New data from a survey of corruption perceptions in Latin America can assist chief compliance officers in tailoring their compliance programs to address risk and compliance expectations.
- Results show which government areas, from customs (highest risk in Colombia) to the police (Mexico), present the greatest risk.
- Insight into anti-corruption compliance programs in Latin America is providing useful benchmarking data for chief compliance officers.
- Several countries have mature compliance environments (e.g., Argentina and Brazil), whereas others lag significantly behind US standards (e.g., Bolivia and El Salvador).
- Local anti-corruption laws with compliance standards have led to improved compliance programs in several countries (including Costa Rica, Chile, and Peru).

1 Miller & Chevalier, *2020 Latin America Corruption Survey*, accessed November 9, 2020, https://bit.ly/36iPigf.
2 U.S. Dep't of Justice, Criminal Div.,*Evaluation of Corporate Compliance Programs* (Updated June 2020), http://bit.ly/2Z2Dp8R.
3 U.S. Dep't of Justice and the Enforcement Div. of the U.S. Securities and Exchange Comm'n,*A Resource Guide to the U.S. Foreign Corrupt Practices Act, Second Edition*, July 2020, https://bit.ly/2FBw5g7.