

Country Review Session

Argentina, Perú and Chile

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Compliance Certification Program

Overview

1. Beyond ethics: Is there a business message to convey to the organization to prevent corruption?
2. The cost of corruption: Direct and Indirect Costs
3. Anti-Corruption Regulations in Argentina, Chile and Perú:
Main legal issues
4. You worked hard on the prevention but...
5. Cross-Border Investigations: Practical cases and scenarios



**Is it possible to convey a message
to the business line that goes
beyond ethics or “the right way to do things”?**



The Cost of Corruption

Is it possible to estimate it?

Is it possible to do an economic assesment?

Direct Costs + Indirect Costs

What about individual responsibility?



Direct Costs - Level 1

- ✓ Fees from regulators

Direct Costs - Level 2

- ✓ Professional Fees
 - IT / Forensics
 - Lawyers
 - Accountants
 - Investigators
- ✓ Corrective actions
- ✓ Monitoring from government agencies



Indirect Costs - Level 3

- ✓ Reputation
- ✓ Credit Rating
- ✓ Employees: increase *turnover*, low morale
- ✓ Regulators: more scrutiny and intervention
- ✓ Loss of clients
- ✓ Problems in commercial relations with third parties



Anti-Corruption Regulations

		FCPA	Argentina (Law 27,401)	Chile (Law 20,393)	Perú (Law 30,424 + Decree 1,352 + Law 30,835)	Brazil (Law 12,846)
1	Corporate criminal liability for local bribery of PO	No*	Yes	Yes	No (Administrative Liability)	No (Administrative Liability)
2	Corporate criminal liability for transnational bribery of PO	Yes	Yes	Yes	No (Administrative Liability)	No (Administrative Liability)
3	Corporate criminal liability for other corrupt interactions with PO	No	Yes**	Yes***	Yes****	No (Administrative Liability)
4	Corporate criminal liability for local/transnational private bribery	No	No ⁺	No	No	No
5	Individual liability for bribery and other corrupt interactions with PO	Yes	No (Regulated in the Criminal Code)	No (Regulated in the Criminal Code)	No ⁺⁺ (Regulated in the Criminal Code)	No (Regulated in the Criminal Code)
6	Books and Records	Yes	Yes***	No	No	No
7	Facilitations Payments Promotion Expenses	Yes	No	No	No	No
8	Regulations on ABC compliance programs	No (FCPA Guide)	Yes (OA Guidelines)	Yes	Yes	Yes (Decree 8,420)
9	Mandatory ABC Compliance Programs	No	Yes, in certain cases	No	No	No
10	Benefits of having ABC Compliance Programs	Yes	Yes	Yes	Yes	Yes
11	Type of benefits for having ABC Compliance Programs	Reduction in penalties	Reduction in penalties Exemption from penalties and administrative liability	Exemption from liability Reduction in penalties	Reduction in penalties Exemption from administrative liability	

* Covered by other regulations.

** Local and transnational influence-peddling (giving anything of value to influence a PO), illegal levies, negotiations incompatible with the public office, illegal enrichment of public officers and employees.

***Money laundering, terrorist financing and receiving stolen goods.

****Money laundering and terrorist financing.

* Except for private bribery in the financial industry regulated in the Criminal Code.

⁺⁺ Criminal Code: Criminally liable the partner, shareholder, manager, director, administrator, legal representative, person empowered, employee or consultant of a legal entity involved in private bribery.

⁺⁺⁺ To cover up national/transnational bribery and influence peddling.

Case Study

Players

1. Pharma Inc.

- Multinational pharma company with headquarters in the US.
- Stock traded in the New York Stock Exchange.
- Subsidiaries in Argentina and Chile.
- The Chile subsidiary is a shareholder of the Argentine subsidiary.

2. Tango S.A.

- Argentine company.
- Family-owned with 2 shareholders, 50% each one.
- Non-exclusive distributor of Pharma products in Argentina, Chile and Peru.



Case Study

Scenario 1

Pharma's hot line receives reports of 2 allegedly improper conducts.

First conduct

Mr. Perez, an employee of Pharma's Argentine subsidiary, would have made payments to customs officials to expedite imports of medicines to treat life-risk patients.

Second conduct

Tango would have made monthly contributions to an NGO.

The NGO in turn would pay doctors conducting certain medical trials that would include Pharma products.



Case Study

Scenario 2

Pharma is about to sign an agreement to acquire 50% of Tango from one of its shareholders.

Call Option

Pharma will have a call option to acquire the remaining 50% from Mr. Gardel, Tango's second shareholder.

The option window to exercise the call is 5 years.



Case Study

Scenario 3

Mr. Gardel, Tango's shareholder and a potential future partner of Pharma in the company, has been mentioned in the current Argentine notebook investigation as having made contributions to Mrs. Cristina Kirchner's political campaign.



Thank You!



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