

***What Keeps Latin America Compliance Counsel Up at Night***  
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When I launched my own FCPA law practice, I quickly learned the most important question to ask clients: “What keeps you up at night?”

For the General Counsel with whom I speak, more often than not the answer is – “the FCPA.” Compliance officers with responsibility for FCPA issues get more specific.

Over the last six or so months, I have had the opportunity to discuss this question with numerous compliance counsel who oversee Latin America. They have come from a wide range of industries and sectors, including technology, mining, oil and gas, defense, chemicals, transportation, financial services, and agriculture. A few general themes have emerged from these discussions.

**1. Third Party Risk** – It is commonly known that implementing a program to effectively vet a company’s consultants, agents, distributors, and other third parties for corruption risk, and monitor them on an ongoing basis, can be a monumental task. In an era of heightened risk, compliance officers throughout the world struggle with it.

But the risk merits this work. In fact, several cases in Latin America have involved third parties. [Alcatel-Lucent](#) in Costa Rica and Honduras, [Siemens](#) in Argentina and Venezuela, and [Universal Corp](#) in Brazil quickly come to mind.

Based on reports from the field, third party challenges sometimes take on a unique character in Latin America. For example, unsuspected third parties now seem to be presenting more risk. In Brazil, I hear stories about local law firms being used as conduits for indirect improper payments. In Argentina, I hear stories about local third party internal investigators, who are retained by the company to help identify compliance failures, being paid off by the bribe payors themselves to ignore evidence of corruption.

The due diligence process can also get more complicated when local companies in the region are family owned. These companies are reluctant to open up their books and operations to outside lawyers and accountants, not necessarily because they have done something wrong, more because of pride. Local counsel who represent them and understand the need for due diligence struggle every day with trying to explain the evolving business requirements of international work. Working through these issues requires special time and attention.

**2. Keeping Compliance Interesting** – Several large multi-nationals corporations have been doing work in Latin America for years and have, during that time, implemented sophisticated compliance programs. They now face a new challenge. Keeping compliance interesting.

All too often, employees in high risk situations get bored with compliance – the same annual computer training, the same due diligence checklist. They simply go through the motions. They stop thinking critically about risk.

The problem is, in dynamic markets, critical thinking is essential to addressing evolving risk. Corruption has a way of finding new pockets of opportunity, new loopholes. Being alert is vital to compliance.

As a result, compliance counsel are looking for innovative ways to keep compliance fresh. How do they keep employees in high risk positions on their toes? Some companies experimenting with spot awards for good compliance acts, heightened disciplinary measures for egregious compliance failures, and in-person trainings that tap into local culture. Compliance officers will continue to look for ways to capture employees' attention as their operations in the region expand.

**3. More Active Watchdog NGOs** – Several Latin American countries have spawned active watchdog non-governmental organizations (NGOs) over the years. The abilities of these organizations have been fine-tuned through decades of battling corruption in government. I worked at one in Argentina that focused on freedom of expression issues at a time when the press was under attack from the police and other government bodies. Argentina had just established a new democracy only ten years before. Society was beginning to flex its muscles.

Now these outlets are mature. They are part of international watchdog networks. Local chapters of international organizations, like Argentina's [Poder Ciudadano](#) of Transparency International's network, combine local knowledge with international expertise. These organizations know that, in an era of new anti-corruption standards driven by national laws, international treaties, and internal compliance programs, their work can have far-reaching effects.

NGOs are also utilizing technology to increase impact. They quickly share stories on Twitter. On-line reporting centers, like [corruptiontracker.org](#), regularly receive tips from the region. Governments themselves have tried to shut them down, with little success. Argentina [blocked Leakymails.com](#) allegedly for national security and privacy reasons. But the site then found other ways to circumvent the block. A hacker group in Brazil has [reportedly](#) released files proving corruption there.

The groups are turning their sights to companies operating in the region. And compliance officers are learning that they must grapple with this new dynamic. In some Latin American countries with strong socialist streaks, foreign companies can, unfortunately, be seen as the enemy.

Enforcement officials have many ways of discovering FCPA violations. This is becoming yet another one.

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