

BUSINESS LEADING ON ETHICS IN LATIN AMERICA

LOCAL AND MULTINATIONAL COMPANIES ON HOW THEY PRIORITIZE INTEGRITY

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Executive Editor

Tyler Lawrence

Creative Director, Illustrations & Art

Chip Cole

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Contributors

Leslie Benton, Mavin Dominguez Arroyo,
Raphael V. Estrada, Daniele Fernandes Hickey,
Carlos Garcia Jimenez, Tyler Lawrence, Roberta Paoloni,
Ignacio Stepancic, Eduardo Vargas-Garcia

Executive Director

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Chief Executive Officer

Tim Erblich

EVP, Chair of BELA

Erica Salmon Byrne

EVP, Ethisphere Services

Jonathan Whitacre

Senior Vice President, Executive Director, BELA

Kevin McCormack



Main Office Phone 480-397-2655 **Write To Us** info@ethisphere.com

Office Address Ethisphere, 6991 E Camelback Road, Suite B-210
Scottsdale, Arizona 85251

Subscriber Services/New Subscriptions

Please email us at info@ethisphere.com. You can also call us at 480-397-2655 or
write to **Ethisphere Magazine** at 6991 E Camelback Road, Suite B-210
Scottsdale, Arizona 85251

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Our Mission Statement

The Ethisphere® Institute is the global leader in defining and advancing the standards of ethical business practices that fuel corporate character, marketplace trust and business success. We have a deep expertise in measuring and defining core ethics standards using data-driven insights that help companies enhance corporate character. Ethisphere believes integrity and transparency impact the public trust and the bottom line of any organization. Ethisphere honors superior achievements in these areas with its annual recognition of The World's Most Ethical Companies®, and facilitates the Business Ethics Leadership Alliance (BELA), an international community of industry professionals committed to influencing business leaders and advancing business ethics as an essential element of company performance. Ethisphere publishes *Ethisphere Magazine* and hosts ethics summits worldwide.

*The opinions expressed in this magazine are those of the authors, not the printer,
sponsoring organizations or the Ethisphere Institute.*

Dear readers,

We at Ethisphere are very proud to introduce the inaugural Latin America special edition of *Ethisphere Magazine*, featuring members of the Business Ethics Leadership Alliance (BELA) community

This publication features unique insights, program developments, and emerging trends in compliance and ethics by leaders based in the Latin American market and supporting the work of their companies and peers thorough the BELA Latin America community. This new chapter of the Business Ethics Leadership Alliance—including companies like Fresnillo, Penoles, 3M, AT&T, Sertecpet, Minesa, Pampa Energia, Dell, Honeywell, Marriott, Uber, and more—is anchoring a new era of ethical change, company leadership, and innovation in the region. The community is now enriched with participation by company representatives from Argentina, Brazil, Colombia, Ecuador Mexico, and beyond. This diverse level of participation bolsters cross-industry collaboration and information exchange. We could not be more pleased to share these insights with you.

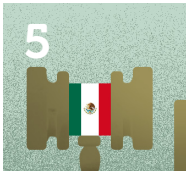
The expansion of our activities in Latin America this past year has been driven by regulatory changes found in new anti-corruption laws in Mexico and Argentina, the ongoing impact of Brazil's Clean Companies Act, and other anticipated changes to the overarching business and legal climate have prompted many companies to devise new models for managing risk and re-examine their corporate culture. A region once rife with perceptions of systemic misconduct now sees greater emphasis on transparency and the need to improve compliance standards. The ethics and compliance function is now among the leading focal points for company transformation, and among the top priorities for government authorities. Integrity, therefore, is now a true differentiator, and competitive advantage, for companies in the region.

Throughout the first Mexico City Ethics Summit last summer, and our partnerships since with companies for peer-to-peer roundtables in Mexico and Brazil to promote knowledge exchange, the community has demonstrated its innovative thirst to improve best practices and support one another in order to accomplish these goals. You will find the spirit of these activities and areas of concentration captured in this publication, and we credit those companies investing in the BELA Latin America chapter for enabling us all to work on these issues at an unprecedented level of sophistication.

Of course the work is never done, and I am truly excited about the opportunities this presents for the companies working with us so closely each day to ensure that we each have clearer pathways towards progress, resources that can support the community's work, and data that can inform leaders on how to adapt and respond to program changes. I'm very proud to be part of Ethisphere and be able to support and promote the interests of the Latin America business and compliance community as we each seek to inspire integrity practices throughout the region



Daniele Fernandes Hickey
Managing Director, BELA Latin America, Ethisphere



Parallel Requirements

Written by Eduardo Vargas-Garcia



Partnering for Integrity

Written by Tyler Lawrence



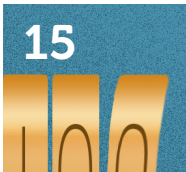
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Channel Partner Due Diligence

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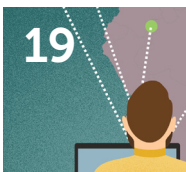
From baking leaders to integrity pioneers

Written by Ignacio Stepancic and Mavin Dominguez Arroyo



Raising Third Party Standards

Written by Raphael V. Estrada



Trends in Regional Compliance

Written by Leslie Benton

Parallel Requirements

How Mexican Compliance Law Compares with US Regulations

Written by
Eduardo Vargas-Garcia

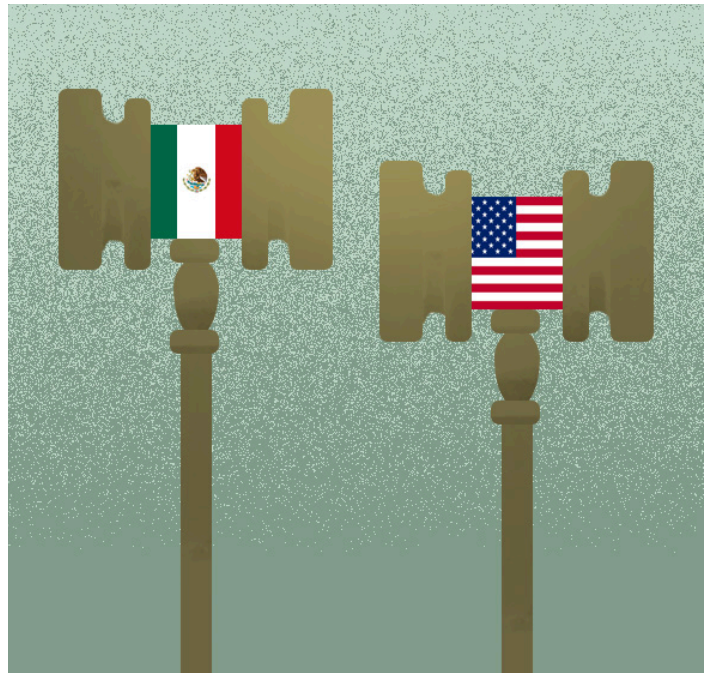
In 2016, Mexico passed a law to create the National Anticorruption System (NAS). Rather than an entity, the NAS is an organized set of regulations that coordinate several government entities and agencies to enhance anti-corruption controls. One key piece of this set of regulations is the Federal Law of Administrative Responsibilities (FLAR), a federal regulation that provides the rules for Mexican public servants' conduct. With the rise of the NAS, the FLAR now also includes a chapter outlining corporate responsibilities to prevent and detect corruption.

While the FLAR contains a similar set of rules applicable to public servants' conduct just as the Mexican Federal Criminal Code does, it is important to outline that these two regulations should be read and interpreted jointly rather than separately, and that administrative responsibility does not cancel criminal liability.

The FLAR not only limits the scope of public servants' conduct, but also makes organizations and corporations accountable for any misconduct or felony committed by their directors, employees, or through a third party acting on their behalf. This is one of the new advancements in the Mexican regulation to counter corruption, with a similar approach to the U.S. Foreign Corrupt Practices Act.

In this sense, any administrative misconduct can easily fall within criminal jurisdiction, and sanctions may vary; for example, a public servant (Mexican or foreign) can be found administratively liable for intentionally overlooking a permits matter under their supervision, and both that public servant and the Mexican corporation involved can be found criminally accountable for embezzlement on the same matter, after trial.

Aside from FLAR containing principles and guidelines governing



the actions of public servants, it provides rules to design what the document calls an "Integrity Policy."

Such FLAR rules not only aim to preserve the integrity of organizations and corporations, but also to provide possible extenuating circumstances in case an organization or corporation faces administrative or criminal sentencing for corruption offences. If the organization or corporation has such an Integrity Policy in place, that can lessen the severity of punishment. Some of the elements of an Integrity Policy are clearly correlated to the Elements of an Effective Compliance Program as set forth in Chapter 8 of the U.S. Federal Sentencing Guidelines (FSG).

In accordance with FLAR, the elements of an Integrity Policy are the following, and here those are also compared with the FSG Elements of an Effective Compliance Program:

1. *"Organizational manuals and procedures that define key functions and responsibilities of each area, and clearly outlines the chain of command and leadership throughout the structure."* This can be read as the equivalent of the FSG requirement for companies to have policies and procedures that outline responsibilities for compliance, detail proper internal controls and auditing practices, and set forth disciplinary procedures. Despite such comparison, FLAR requirements can be fulfilled only with, for example, human resources organizational manuals and a Delegation of Authority policy. Unfortunately, this requirement describes activities as if an organization was a rigid structure. In practice, many organizations have no task-specific manuals given the agility required to conduct business.
2. *"A code of conduct duly published and socialized among all*

members of the organization, which includes applicability systems and mechanisms.” Besides the written policies required under FLAR, the FSG also provides that an organization must have tone at the top from corporate leaders committed to a culture of integrity and respect for the law, which should also be reinforced and implemented by middle managers and employees at all levels of a business. Many organizations that follow FSG have gone far beyond this requirement and developed compliance programs that include a Compliance Communications Plan to specifically disseminate policy content and creative examples among the organization.

3. *“Adequate and effective surveillance and audit systems that constantly monitor compliance with integrity standards throughout the organization.”* By comparison, the auditing and monitoring provision of the FSG states that companies should regularly review and improve their compliance programs and not allow them to become stale. How Mexican prosecutors will determine the adequateness of such systems under FLAR is still to be seen, as organizations continue to implement their Integrity Policies to deter corruption.
4. *“Adequate reporting systems, both within the organization and to authorities, as well as disciplinary processes, and concrete consequences regarding those who act contrary to internal policies or against the law.”* Reporting is one key element of a compliance program based on the FSG, and unlike the Mexican regulation, U.S. regulation emphasizes that reporting misconduct or violations of the company’s policies should be possible on a confidential basis and without fear of retaliation. However, FLAR does mention a provision similar to the FSG about having a process for investigating allegations and documenting the company’s responses, including disciplinary or remediation measures.
5. *“Adequate training and education systems regarding the integrity policy.”* The FSG pays particular attention to training, saying that companies should ensure that relevant policies have been communicated throughout the organization, including through periodic training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners. In this sense, the FSG considers training and communications initiatives to be equally important. Mexican regulation falls short, as it is limited to training. Even though FLAR mentions that the Code of Conduct should be socialized (see 2), the FSG provision is broader as it provides all policies should be communicated to the organization, including through periodic training.
6. *“Human resources policies that ensure appropriate screening before hiring individuals, in order to mitigate any potential risk to the organization. In no case these policies may authorize discrimination of any individual, even if motivated by ethnic or national origin, gender, age, disabilities, social status, health conditions, religion, opinions, sexual preferences, marital status or any other condition that is contrary to human dignity and nullify or impair rights and people’s freedoms.”* In this section, the FLAR prohibits harassment and discrimination. This FLAR provision can be interpreted as an attempt to handle third party risk and due diligence, but it limits background reviews

to individuals who are candidates for internal positions in the organization. Similarly, the FSG lays out that companies should conduct risk-based due diligence before engaging with third parties and undertake some form of ongoing monitoring of third-party relationships including updating due diligence, exercising audit rights, periodic training, and requesting annual compliance certifications. The FSG does not limit this provision to individuals but opens it up to any third party, in accordance with a risk assessment, prior to being engaged.

7. *“Mechanisms that ensure transparency and publicity of the organization’s interests, at all times.”* The exact meaning of this FLAR rule is still unclear. Some organizations’ interests might be kept confidential for business or legal reasons. This rule might have been an attempt to enact a “Books and Records provision” in Mexican legislation, but if so, it fell short in that sense. It might also be considered as an incentive for corporations and organizations to publicize their Integrity Policy. Some companies and organizations publicize their Codes of Conduct and main policies in their websites, and still fail to have an effective compliance program in place. And some others may choose to maintain a discrete approach on how their compliance efforts are publicized and still be among the world’s’ most ethical companies.

FLAR provisions requiring an Integrity Policy are the first concrete regulatory step that may lead to local, more robust compliance programs in Mexico in the future. There is still a road ahead in terms of third-party review, auditing and monitoring, reporting and investigations, tone at the top, and leadership and oversight, all crucial elements of a compliance program.

In Mexico, enforcement will be key in the coming years. As the legal framework around Integrity Policies continues to evolve based in best practices, we might be seeing more interesting developments around how compliance programs are tailored for Mexican organizations and companies.

Whether in Mexico or another country, compliance officers should bear in mind that no matter which elements of a compliance program are regarded as more important by any local law, whether at earlier or more mature stages, maintaining the effectiveness of a program is essential for any organization to succeed.



Eduardo Vargas-Garcia

Eduardo Vargas-Garcia has been the Ethics & Compliance Director for Constellation Brands, Inc. since early 2019. Prior to this role, he was an ethics & compliance officer for the Latin American operations of global beauty brand Avon. He has also held in-house roles at multi-nationals such as Procter & Gamble, Philips, and S.C. Johnson. Vargas-Garcia holds a degree in law from the National Autonomous University of Mexico (UNAM, CU), as well as a diploma from the International Anti-Corruption Academy in Vienna.

Partnering for Integrity

Dell Technologies and Ethisphere's Digital Partner Program

Written by
Tyler Lawrence



Henrique Barcelos works in the family business, a technology solution provider called LTA-RH based out of the southern Brazilian city of Porto Alegre. Many members of Henrique's family play a role in its operations, and the company sells almost exclusively to the public sector in a country recently notorious for corruption investigations. While it has always operated with integrity, since LTA-RH does business in a country with well-publicized scandals such as Operation Car Wash and a relatively high perception of corruption, LTA-RH must prove it has a sophisticated compliance operation—especially to remain a major partner of Dell Technologies.

Dell Technologies, alongside experts from Ethisphere, recently rolled out an initiative to help bring compliance best practices to companies in its partner network such as LTA-RH. In 2020, that initiative will spread worldwide within its reseller ecosystem.

Dell Technologies recently launched their Progress Made Real 2030 plan which lays out key social impact commitments for the coming decade. The first several sections focus on topics that have become the bread-and-butter of company CSR—sustainability, strategic giving, social innovation, and diversity and inclusion. However, the final chapter, titled "Upholding Ethics & Privacy," ventures into new territory. In it, the company outlines a variety of concrete commitments toward becoming an even more transparent steward of its customers' data, as well as a commitment to digitally support its extensive partner network in the fight against corruption.

For any company, this would be a significant undertaking, but given the large partner community Dell Technologies' works with on a daily basis, it's especially daunting. In addition to selling directly to its customers, Dell Technologies' solutions are also sold via what it terms channel partners. Some of these partners are other large, sophisticated multinationals, with extensive anti-bribery and corruption controls to match Dell Technologies' own. However, in certain markets, some of those channel partners look a lot like Henrique and LTA-RH. Over the next decade, Dell Technologies plans to help them step up to meet international best practices.



Ethisphere CEO Tim Erblich onstage at the Dell Technologies LatAm Partner Summit in August 2019.

A New Plan for Success

For Dell Technologies' Chief Responsibility Officer Chris Fraser, including ethics and privacy in the new ten-year social impact plan felt natural. "We did a company-wide survey asking team members what they felt were important initiatives for Dell Technologies to commit to for 2030. We also solicited input from many of our leaders and conducted an external materiality assessment," she explained. "One thing that surfaced consistently across all stakeholder groups was the importance of ethics and privacy to our team members and customers."

The company's Chief Ethics and Compliance Officer, Mike McLaughlin, is fellow signatory of the Progress Made Real 2030 plan and owner of the new goals. "Integrity is in many ways table stakes," he said, "but it can never be assumed or taken for granted. It has to be emphasized in what we tell the world is important to us."

On top of that, Dell Technologies' other social impact goals—for example, to recycle or reuse an equivalent product for every one purchased by 2030—require a level of customer trust that only an ironclad commitment to ethics and privacy could produce. "We need our customers and partners to commit to returning out of service IT products, but customers have concerns over the data that sits on those old devices," Fraser said. "Since 2007 we have recovered 2B pounds of used electronics, maintaining our customers' trust by following strict data disposal standards. This track record, combined with the inclusion of ethics and privacy as a fundamental part of our plan and goals, lets partners and customers know they can trust us to deliver without compromising data privacy."

As for the decision to put a stake in the ground and make concrete commitments to ethics and privacy in the social impact report, Mike McLaughlin succinctly explained, "If something matters to you, you talk about it, and you measure it. Ethics and privacy matter to Dell Technologies."

How? The Digital Partner Program

Of course, it's one thing to say that ethics matter within your own company, and to say you will certify your own compliance processes with that standard. But Dell Technologies is going a step further. In Progress Made Real, Dell Technologies has stated that by 2030, 100% of the over 10,000 partners that Dell Technologies has a direct relationship with will demonstrate their commitment to the company's values.

As the Progress Made Real plan states, "We drive a high standard of responsibility in our partner ecosystem...[Dell Technologies] will provide our partners digital tools to assess and improve their own programs in order to meet Dell Technologies' expectations and evolving industry requirements."

How exactly does the company plan to do that? One strategy involves the Digital Partner Program.

Working with experts from Ethisphere, Dell Technologies ran a pilot of the Digital Partner Program with a few of its channel partners in the Latin American market in mid-2019. As Mike McLaughlin explains it, "The Digital Partner Program, which we are conducting in partnership with Ethisphere, allows our partners to upload the key elements of their ethics and compliance programs and have those elements digitally



evaluated and a gaps analysis and improvement path identified when warranted. This allows us to reach many more partners in a timely, consistent, and cost-effective manner."

Eventually, Dell Technologies will encourage its partners operating in the highest risk environments around the world to participate in the Digital Partner Program. Obviously, any initiative on this level requires getting buy-in from the business leaders. For Dell Technologies, they were easy to convince. The company's SVP of Latin America Channel Sales, Alvaro Camarena, places a premium on his ability to attract and maintain ethical partners. As he said, "At the end of the day, the biggest competitive advantage we can all have is peace of mind." Setting a high bar allows Dell Technologies to attract partners who can and will want to meet it, kicking off what he calls a "virtuous cycle."

Streamlined and Feedback-Oriented

Rolling out the program in the Latin American market, given the spotlight on anti-bribery and corruption work there for the last several years, was a natural choice. At LTA-RH, Henrique Barcelos was eager to have his company, one of Dell Technologies' largest solution providers in Latin America, participate. "Compliance has been a business differentiator for us," he explains. "With the new anti-corruption laws, if you don't have a compliance program, you cannot sell to many states in Brazil. We have to be very ready and structured to sell in the public sector."

It also helped that LTA-RH found the Digital Partner Program extremely straightforward. Barcelos called it "very easy, very practical," and said the company had managed to compile the necessary documentation over a month ahead of schedule because of how streamlined it was.

Importantly for the partners, the Digital Partner Program is not a traditional audit, which Camarena says has a distinctly "negative meaning" in the region. Rather, he likes being able to approach companies saying, "We're interested in keeping the partnership with you, and we're going to work together on how to solidify and get 100% compliance on matters that are critical for us."

Best of all, the feedback from the Program is also immediately useable. "We implemented recommendations as soon as we received feedback," Barcelos said. "We updated our documentation internally, and had rounds of internal training." While LTA-RH had been strong on Brazilian compliance, Barcelos said that the recommendations were quite helpful in bringing the company's programs in alignment with some international regulations with which they were less familiar.

Now, Barcelos has mentioned the Digital Partner Program to other companies with whom he works as well. "Their jaws drop when I talk about it," he says. "They'll say, 'Oh, Dell Technologies did that for you?'" Most importantly for LTA-RH, other companies are now more eager to partner with him knowing that his compliance program has benefitted from this support. Ethics as Value Proposition

Although Dell Technologies' commitment to championing ethics throughout its partner network will require significant investment, everyone involved is confident the commitment will pay dividends. Prior to her role as CRO, Chris Fraser held a variety of roles at both Dell Technologies and, prior to the merger, EMC. That background has given her a perspective that informs her conviction that the company's social impact goals move the bottom line. "Many of our customers and partners care about this, now more than ever. We have always understood that real progress requires deep alignment with our business priorities."

Mike McLaughlin agrees. "We win because of who we are and how we conduct ourselves, in addition to our world-class products and solutions." Elevating not only Dell Technologies' ethical commitments, but also those of their entire partner network, furthers that ethos. As he says, "Customers want to associate with companies that share their values, especially today where a company's brand and reputation are tied to all companies in their ecosystem."

For Alvaro Camarena in charge of Dell Technologies' Latin America channel business, the program's success will ultimately mean the partners take the reins. "Right now, we're bringing everyone up to speed. When we are successful, everyone will be 100% compliant, and they are looking for ways to innovate further." Eventually, that will put the regional corruption scandals of recent years firmly in the past. At that point, in Latin American economies, he hopes, "Just like in the movies, in the end the good guys win."



Tyler Lawrence

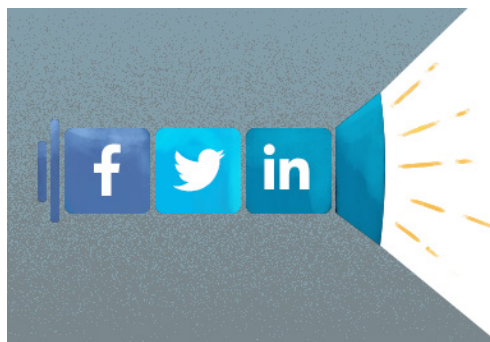
Tyler Lawrence is the Executive Editor of Ethisphere Magazine. He oversees the content of the print magazine, Ethisphere' special reports, and other publications, as well as magazine.ethisphere.com. He

is deeply engaged in conversations about the purpose of the corporation in the 21st century, and how an ethical company should interact with its many stakeholders. He may be reached at tyler.lawrence@ethisphere.com.

Uncertainty In Latin America

Rules for Compliance in a Time of Change

Written by
Carlos Garcia Jiménez



Currently Latin America is experiencing several social movements with group demonstrations in Argentina, Brazil, Bolivia, Chile, Colombia, Mexico and Peru. Their demands go from respect for human rights, claiming protection for civil society, enforcement of the rule of law, health services coverage and, of course, support for the fight against corruption.

More and more frequently, newspaper headlines or social network trends mention the involvement of government officials of all levels in corruption cases, or illicit activities. Social networks have undeniable power to reveal such misdeeds and to bring light to cases such as the Panama Papers, Odebrecht, Pemex Gate, and many others.

On one hand, we can now see a negative “spread” by political actors throughout Latin America, who are seemingly in some kind of quest to see who will be involved in the biggest corruption scandal. Meanwhile, governments claim more transparency and zero tolerance, but are not able to implement systems that can really fight against it more effectively. On the other hand, there is a positive spreading by civil society looking for more transparency and accountability, and effectively combatting corruption. This is the environment which organizations have to navigate as part of a civil society searching for judicial, regulatory, and macroeconomic stability.

Below we will analyze some trends on the horizon for 2020 which are particularly relevant for those organizations that want to keep a world-class compliance program:

1. Uncertain climate that complicates analysis

Currently, organizations are operating in an uncertain climate without precedent, characterized by regulatory insecurity, geopolitical volatility, and macroeconomic uncertainty. All of them combined make it very difficult for ethics and compliance specialists to diagnose and handle an organizations’ risks even though quick, correct, proactive and effective answers are required by their clients.

More and more frequently, compliance specialists have to provide counsel in an uncertain regulatory field, at the expense of a “total compliance” culture. In other words, when faced with scenarios in which authorities issue either ambiguous regulations or, intentionally, they decide not to issue any kind of regulation, it is very tempting for organizations’ business areas—measured according to growth or profitability—to lean towards the “grey areas of law,” significantly increasing risk. Any opinion that sounds conservative or tending to minimize risk then seems to them inoperable or bureaucratic, taking the organization to a culture of “comply with the least inconvenient.”

Some recommendations to minimize the impact caused by uncertainty:

- Planning is essential when facing uncertainty. It is necessary for compliance officials to participate in any meetings where business plans are discussed, so they can better understand both the commercial challenges faced by the

organization and its expansion plans. This way, they will be able to provide solutions that are not only theoretically viable. A good compliance specialist is looking for the way to offer “a how to make it possible solution” to his clients.

- Analyze diverse adverse scenarios in order to establish possible impacts on every essential area of the business, understanding that every commercial activity involves risk to a greater or lesser degree. The secret is to know how to balance the risk taken and the benefits that will be obtained when that risk is assumed.
- Constantly monitor regulatory changes that can affect operations and, if possible, participate with chambers and committees that help to educate legislators and regulatory authorities about the implementation of proposed measures.
- It is important to be agile but strict regarding the fact that decisions must always be taken with compliance in consideration.

2. New technologies can cause a clash between efficiency and ethics

Organizations that are looking to grow—in theory, all of them are—regularly develop new capacities, including employ “big data” or analytic tools that allow them to predict market dynamics. However, the development of these capacities does not always come with clear lines from a regulatory and ethics perspective, leaving organizations to decide between the value they can obtain exploiting those capacities, while trying to avoid crossing thin, undefined lines.

In Latin America, a stronger culture regarding private information access, handling, distribution, control, and even destruction of databases owned by organizations is necessary.

Therefore, recommendations include:

- Complying with regulations related to third parties’ personal information protection and handling. We should expect that users will demand increased protection, and it is important that organizations have the proper mechanisms.
- Compliance experts must get familiar with the use of new technologies in order to detect and mitigate associated risks in a proactive manner.
- Increase transparency around database and personal information use, because users expect that their information is being used only for purposes authorized by them.
- Create response mechanisms to address consumer questions/complaints about these technologies in an effective and quick manner.
- Implement controls related to data sharing.

3. Using Commercial Partners

Organizations are more frequently delegating to third parties some activities which will be carried out on its behalf, this implies a much more complex ecosystem. We have to consider that actions conducted by these third parties on behalf of the organization may bind it for legal purposes, creating joint liability.

Let’s now imagine that some of the common practices of these third parties are, for example, not complying with regulations about workers’ labor conditions, or employing minors, or

offering gifts to government officials. Hence the importance of conducting the due diligence necessary to know the details of our partners, or those representing the organization. Relationships that deserve special attention include lobbyists, managers and consultants interacting with government officials, customs agents, subcontractors, law firms, charity organizations, and suppliers. recommendations include:

- Increase business partner monitoring to guarantee that they are complying with the standards of your organization.
- Provide tools so those third parties which do not have a compliance program can adopt one.

4. Investors/consumers are looking for Socially Responsible Companies

Due to what is occurring in Latin America, consumers and investors are increasingly looking for organizations who are good corporate citizens. Organizations that really want to demonstrate a real difference to investors and consumers must have a formalized social responsibility program.

The temptation to implement a “paper” corporate social responsibility program should be avoided at all costs, because adverse impacts could badly damage the organization, given that social networks can spread negative news quickly. Recommendations include:

- Implement a social responsibility program to differentiate your company from other competitors in the market.
- Implement a social responsibility program only if there is a commitment from different levels of the organization to keep this program “alive.”
- Provide an effective and timely answer to investors and consumers if there are any questions related to the program or its results, in order to decrease any negative impact.

In conclusion, challenges and opportunities faced by organizations in Latin America in 2020 require executives and compliance specialists to forget what they think they know, and to start to learn new ways to solve problems with a vision clearly focused on listening to what consumers and investors have to say, with ethics as their guide.



Carlos Garcia Jiménez

Carlos Garcia Jiménez has been Director of Ethics & Compliance for Latin America at UBER since April 2019. Carlos is responsible for promoting a culture of ethics and compliance based on values throughout the region, as well as a vision of compliance as a competitive advantage with the aim of promoting a culture of high integrity and provide practical guidance that allows sustained business growth. Prior to joining UBER, Carlos worked for TE Connectivity LTD as Compliance Counsel Americas from 2013 until March 2019; his previous experience was as Executive Director of Compliance & Ethics for the Intercon Region for Bristol Myers Squibb Co. Prior to BMS, Carlos worked more than 10 years in various legal and governmental positions in Mexico.

Channel Partner Due Diligence

Audits Done the Right Way

Written by
Roberta Paoloni



If you work with ethics and compliance, I am pretty sure the topic of “third party due diligence appeared in your email inbox at least once this week, either because you received an email offering services to conduct due diligence, there is an event on the topic, or you actually have conduct one yourself.

One of the bigger challenges of implementing an effective compliance program is to ensure three things: that third-party assessments are embedded into company processes, that they effectively identify, capture, and mitigate the risks involved in a relationship, and that they create awareness about the “quality” of partners being selected.

Channel Partner Challenges

Third party assessments are particularly important for companies that operate through channel partners, which are distributors responsible for representing the company and selling its products to the private and public sectors. There are many advantages to employing channel partners, including increased market reach, better and more tailored logistics, and additional sales and marketing efforts. However, it's also a reality that channel partners are often companies that may not invest in a sophisticated compliance infrastructure, or may be at an early stage of that journey.

In Latin America, it is not uncommon for channel partners to be family-owned and operated companies. Some may have formal and structured compliance processes, but many organizations are less sophisticated and work at the direction of their owners.

Hence, when talking about channel partners, a pertinent question is how companies' due diligence processes can not only capture open source, publicly-available information, but also have the ability to detect other underlying risks. What is the third party's compliance culture? How much they have or are they willing to invest in implementing controls or a more holistic compliance program?

Another parallel concern regarding due diligence is that these processes can represent a "snapshot" of a third party at a particular moment in time. If not updated periodically, companies can be surprised by how much that initial picture can change. Antibribery enforcement that started with the "Car Wash" operation in Brazil around 2014 demonstrated this problem: companies that would not have even be flagged for concerns in 2013 have ceased to exist now because of their involvement in corruption investigations. Such cases are becoming more frequent. An effective due diligence processes must be able to capture this dynamic.

For that, some companies have developed well-structured monitoring systems where third parties marked with relevant red flags, or that represent a high risk, are monitored in real time for any adverse public information. This is an effective way to remain updated and to respond to changes in that high-risk relationship. However, real time monitoring requires investment and a robust system to flag issues that are relevant and respond when they arise.

Duty of Information and Audit as Tools

Depending on the size, industry, and financial strength of different businesses, the appetite to invest in a due diligence resources can vary. For these reasons, instead of creating a monitoring system, it is not uncommon that companies will seek out alternatives to complement their due diligence processes. A common way of doing this is through the inclusion of compliance provisions in agreements. While these provisions can vary from company to company, almost all of them have two key themes: (i) duty of information, and (ii) audit rights by the counter party.

Duty of information applies when something occurs with one of the parties that might impact their agreement from a compliance perspective, otherwise called a "notifiable event." Even though this can be a way for one party to be kept updated of any relevant events involving the other party, these obligations are not always exercised in the most effective manner and there may be disagreement about what constitutes a "notifiable event".

This is where audit rights, and exercising them well, become an effective tool. Audit rights are often a controversial part of the negotiation of antibribery provisions, since there are always questions around the scope of such audits, what will trigger them, what will be done with the results, what level of information is included in the scope and who pays for the audit. However, the controversies around audit rights are less difficult if those rights are exercised, not as a response to an issue, but

in a preventive manner and as part of a larger third-party due diligence program. Moreover, audits done by third parties may be even more acceptable, based on the interest of the company to expand businesses with that organization or help the channel partner improve their compliance program.

When done with a specific purpose in mind, audits can be beneficial to (i) identify risks that can't be captured by a due diligence report, such as culture and stage of development of the channel partner's compliance program, (ii) identify decision gates and related controls, and (iii) create more awareness about the business and dynamics of the relationship between the companies. Creating more awareness has the benefit of strengthening the relationship. It's a chance for the company to audit the channel partner, but also for the channel partner to discuss and report issues they have with the company and even trigger meaningful investigations. Finally, from the compliance professional's perspective, these audits are a unique chance to conduct "live" due diligence inside the premises of the channel partner, learn more about the business, and have a first-hand account of the challenges that channel partners may experience with end-users and final customers.

Successful third-party audits need to partner with the internal business relationship owners. The compliance department will establish criteria for selecting partners to be audited and the scope of the audit, but the business must be aware of the activity. The independence of the compliance department is key to an effective due diligence exercise, both in case difficult decisions need to be made in regards to that relationship, or so that the channel partner feels comfortable to discuss any issues in the relationship. In particular, this enables them to report any business conduct issues related to the team that manages them. However, collaboration with the internal "owners" of the business partner relationship is not optional. They need awareness and are critical in facilitating data requests and a successful audit.

The most effective third-party due diligence process cannot rely on a single process but rather should be composed of a series of risk-based tools and processes to dynamically manage the risk, including external due diligence, monitoring, exercise of audit rights, and risk-based contract provisions.



Roberta Paoloni

Roberta Kanawaty Paoloni is the Ethics and Compliance Lead Counsel for 3M US and Canada Area. Mrs. Paoloni has 15 years of experience in legal departments of multinational companies, where she has been able to provide legal support and counsel for several different sectors, including health care, industry, traffic and safety, and automotive, while also acquiring strong experience in regulatory and EHS matters. For the past 5 years, Mrs. Paoloni has dedicated herself exclusively to Ethics and Compliance at 3M, where she led the department in Latin America, and now in US and Canada.

From baking leaders to integrity pioneers

How to maintain a culture
of ethics and integrity in a
fast-growing environment

Written by

Ignacio Stepancic and
Mavin Dominguez Arroyo



When it was founded 74 years ago, Grupo Bimbo began as a family owned company, but it would go on to revolutionize the baking industry in Mexico. From day one, acting with ethics and integrity has always been part of the company's philosophy and its only way of doing business.

In 1989, the company's cross border expansion began, entering into Central America. In the years to follow, Grupo Bimbo expanded to South America, the United States, China and Spain. In 2011, we became the largest baking company in the world, now operating in 32 countries with almost 135,000 associates. With this fast-growing footprint and a solid cultural philosophy, in 2014 the company began a journey to implement Grupo Bimbo's Compliance Program.

Today, Grupo Bimbo has a presence on four continents and in 32 countries, including many with high perceptions of corruption, far away from Latin America. So, how can we maintain a culture of ethics and integrity throughout the whole company in such a fast-growing environment, especially when much of our growth has required mergers and acquisitions?

Due Diligence before M&A

First of all, we start from the premise that every company has a culture, some more similar to Grupo Bimbo's and others significantly different. A merger or acquisition is not destined to fail if there are cultural differences. However, addressing them immediately, establishing the importance of compliance requirements, and monitoring the implementation of the program are all essential



Mavin Dominguez alongside Ethisphere's Erica Salmon Byrne at the 2019 World's Most Ethical Companies(R) gala.

to minimizing any risk and promoting a homogeneous culture of ethics and integrity.

Before an M&A opportunity, as part of the anti-corruption due diligence, Grupo Bimbo performs an integrity due diligence. We address two topics: what is the local compliance risk level in the country where the target company operates, and what type of culture does the company have?

Besides international risks maps, matrixes, and indexes to get a sense of the local challenges, a clear way to get a much broader and well-rounded sense of the specific organizational culture is to communicate with associates in operations, sales, and administrative departments.

Once the M&A process has ended, the implementation of the compliance program begins. The implementation strategy is deployed including the following elements:

Commitment from All Levels

We've all heard the term "tone at the top" as one of the main elements of a compliance program, and it truly is. The commitment to ethics from the Board of Directors, CEO, and VPs is fundamental to the effectiveness of any compliance program. However, in a company with over 135,000 associates, commitment must come in all levels of management, or as we put it, "tone from all leaders." Especially in new acquired companies, commitment from leaders becomes a must-have.

Risk Assessment

Conducting a risk assessment after any M&A is necessary to visualize risks and areas of opportunity. Grupo Bimbo does a risk assessment after the completion of any M&A as part of the compliance program implementation. The results from this activity lets us know where there are pain points, and provides the input to plan the program for the next couple of years. It's a great way to get a clear picture of the new acquired company.

Awareness and Education

In order to spread Grupo Bimbo's culture to new associates, we give onsite training on the company's philosophy, model and global policies. Brochures, videos and visual aids are posted in the facilities, intranet, internal educational programs (GB University) and handed out to associates. Constant communication of initiatives, achievements, Speak-Up Line (hot line) and the philosophy itself is key to not only implement culture, but to achieve commitment from associates.

To measure the effectiveness of the activities mentioned above, Grupo Bimbo established KPIs to monitor the implementation:

- Percentage of completion of training: Number of associates trained.
- Percentage of effective compliance training: Number of associates who passed the quiz after training.
- Number of reports: Speak-Up Line reports.
- Number of views in intranet to compliance related communications.

By performing due diligence about culture and compliance before any merger or acquisition, getting commitment from all levels, performing suitable risk assessments, and following through with awareness-raising measures, Grupo Bimbo ensures that our culture spreads to all new associates around the globe.



Ignacio Stepancic

Ignacio Stepancic is the Chief Compliance Officer of Grupo Bimbo. In this role, he is in charge of the design, implementation, management, and control of the compliance program in 33 countries, including anti-corruption policies, anti-money laundering prevention, data privacy, and conflicts of interest. He is also in charge of internal and external integrity processes, M&A integrity due diligence, internal and external training, background checks, and antitrust issues.



Mavin Dominguez Arroyo

Mavin Domínguez is a Global Compliance Manager at Grupo Bimbo. In this role, she is responsible for coordinating the implementation and continuous improvement of the compliance program in the 33 countries where Grupo Bimbo operates, including training and communication, due diligence, risk assessments, global policies, and monitoring in anticorruption, anti-money laundering, and data privacy.

Raising Third Party Standards

Bolstering Anticorruption
with Effective Audits

Written by
Raphael V. Estrada



In 2017, on a rainy summer afternoon in Mexico City, news breaks on the radio, about Odebrecht—a Brazilian construction company that could be linked to Mexico's president and entourage in the financing of his campaign back in 2011. The report also mentions the involvement of former government officials from different Latin American countries, in different corruption schemes. I consider this a topic worth mentioning in my next morning presentation, which happens to be on corruption.

Most of the audience is aware of the case; nevertheless, the reference causes little surprise or commentary. Mexican society's acceptance of corruption as "normal" is a formidable challenge when trying to implement an anticorruption program in Mexico. It is a daunting task in a society that has proved in the past to be indifferent to myriad notorious corrupt acts from different political actors.

Combatting corruption from within the company requires not only putting in place the traditional checks and balances, controls and policies of a program, but also changing the frame of mind of employees and third parties to create a new norm of not accepting these types of acts

Our first step in tailoring our anticorruption program was to decide whether to pursue the colossal task of obtaining permits with internal resources or by employing third parties. We opted for the latter, due to the size of the task, as well as the complexity, since it involved three levels of government (federal, state and municipal) across the country.

This was not an easy choice, since a prominent case here in Mexico, involving Walmart's relationship with third parties, was still under investigation by the U.S. Department of Justice, and investigation costs amounted to hundreds of millions of dollars, before counting the fine.

Therefore, we had to design an end-to-end process to carefully and thoroughly vet, select, train, and oversee our third parties. We started by creating a policy that clearly stated our expectations and boundaries when working with third parties. Then, we spread this policy using intense trainings both live and online for our employees, and by creating controls that went beyond the traditional three-way match found in regular accounting controls.

Then came the vetting process of our third parties. In our industry, vendors more frequently used to compete on price and service, but never on reputation or past interactions with government entities and/or officials.

Training their employees posed another challenge, since we needed to explain our values, policies and laws to the most exposed and vulnerable link of the chain: those that deal on a daily basis with authorities at all levels.

Therefore, we generated material based on real cases related to their day-to-day job. These had the desired effect, and sparked many questions and comments based on employees' experiences, which served to further enhance our training material.

For four years, we have repeated this cycle and refined it along the way, with great results. I am gratified that our employees tell us that they feel proud when they walk into a meeting representing AT&T Mexico, and that they perceive how others recognize AT&T Mexico as a company that has contributed to changing the way to do business in Mexico.

Nevertheless, I believe that our program should be taken to the next level, one in which we can expand the boundaries of oversight of our third parties. So, I have set a road map to certify our vendors not only at the beginning of the vetting process and through the traditional due diligence, but in all stages of their operations and relationship with us. Among other goals, we want to ensure that human and physical resources are adequate to their operations, and fully comply with local laws and regulations.

As a first step, we envision performing an "on desk" audit, where third parties will be required to provide information related to their employees, disclosing whether they have government officials that serve as employees, shareholders, partners, or are

in any way related to the company. We also want to know if any employee has a family member working for AT&T Mexico. At the operational level, we will check their supervision functions and the segregation of duties. We will also review their policies and procedures related to reimbursements and payments to government entities or officials.

As a second step, we will conduct on-site inspections of our third parties, in order to validate the consistency of their operations, probing processes related to hiring personnel and the way they handle sensitive topics such as hiring current or former government officials, conflicts of interest, and background checks.

In relation to the process of acquiring permits, we will validate it from end to end, including their management of improper solicitations from authorities, as well as their escalation procedures and reporting.

On the accounting side, we will verify that they track proof of travel expenses for the current and prior fiscal years, the source of financing these expenses (advance payments, loans, etc.), the means to expend (wire transfer, petty cash, debit cards, etc.), their process to obtain reimbursements, and their schedule of authorizations.

In addition, we will review their accounts payable procedures, in order to determine how payments to authorities match up with filing papers and related permits.

We are aware that at the end of this exercise, most third parties will have gaps in one or more areas. We will assign each third party a risk score across different areas, which will result in an overall score for the third party. Then, we will coordinate with each third party to prepare a tailored plan, in order to harmonize all reviewed areas with our expectations, and to enhance areas of opportunity in their program and practices.

Periodic updates will follow, to ensure that commitments are met and that any change in our policies or regulations will be properly implemented by third parties.

I am confident that these steps will not only increase awareness in our third parties and their employees of the controls available to help combat corruption, but also will enhance the inclination to do the right thing without compromise. I hope our third parties will understand that Mexico can have a better future if we deter improper conduct in all our spheres of influence and demand the same from our authorities.



Raphael V. Estrada

Raphael V. Estrada is a Assistant Vice President of Compliance for AT&T in Mexico, a role he has held for five years. He has 26 years of experience in the telecom sector. He holds a degree in electrical engineering and an MBA from Universidad Iberoamericana.

Trends in Regional Compliance

The Highs and Lows of Anti-Corruption Programs in Latin America

Written by
Leslie Benton



At Ethisphere we are fortunate to work with companies around the world to assess and improve anti-corruption programs. As a result, we have a robust data set that tells us where companies have strong controls in place and where improvements should be made.

Although there are some regional differences in maturity of anti-corruption programs, in looking at our data, we see that the scores of Latin American companies are very similar to global averages across the categories that we measure. In fact, we see significant variation within the LATAM region, with large, publicly traded companies more likely to have the most mature programs.

Even Robust Programs Have Gaps

Ethisphere's anti-corruption assessments cover the seven aspects of an effective program, including:

- Risk assessment
- Policies, procedures, and controls
- Senior leadership and anti-corruption compliance team
- Management of third parties
- Training and communication
- Monitoring and measurement
- Investigations, corrective actions, and improvements

Our data shows that the Policies and Procedures and Anti-Corruption Compliance Teams are the most mature processes within LATAM and globally. Except for a few large and very mature companies, most companies we have worked with have some policy weakness. Most commonly, these are policy gaps or a lack of clarity in company rules on gifts, travel, and entertainment; treatment of government officials (particularly important in a region where public sector work represents a significant amount of economic activity); donations; due diligence; and reporting and non-retaliation.

Companies should have a full set of policies that address specific risks identified through a formal assessment process and all the common ways that bribery can occur. We do not always see this. Companies should also take greater care when drafting policies to ensure they are clear and written in the local language. If policies are too complex, lack key definitions, or are internally inconsistent, employees may not follow them.

Similarly, many companies lack formal, written procedures. Any policy that requires employee action should have a corresponding procedure that is detailed enough for an employee to follow. This is particularly important for employees engaged in higher-risk activities. Where possible, we recommend that new procedures should track existing procedures and be put in place with users in mind.

Mature companies routinely review and revise their policies and procedures and update them when risks change, such as when acquiring a company, entering a new market, or closing a business unit, or when otherwise triggered by a risk assessment or audit.

The Importance of a Cross-Functional Team

While most companies assign responsibility for the anti-corruption program to someone, the role itself is often part time and roles and responsibilities are ill defined. Even when an anti-corruption compliance function or team exists, it is often informal. Having a competent, senior-level "compliance officer" in place to build out a formal cross-functional team is critical to managing corruption risk.

Effectively implementing a program requires company-wide input. Cross-functionality helps the team build awareness among employees, create alignment between the compliance message and actual behaviors, and provide practical support and guidance for employees. Of course, responsibility for anti-corruption compliance should be part of the compliance officer's formal job description, and he or she should be required to report on program implementation to senior management and the governing body at regular, planned intervals.

Where Programs Fall Short

The least mature processes, both globally and in LATAM, are Management of Third Parties and Monitoring and Measurement. While most companies perform some level of business-focused due diligence on third parties, half do not perform due diligence specific to anti-corruption, even though third parties present a significant corruption risk. That risk is primarily addressed in contracts, but often not specifically. Companies can improve program maturity and reduce risk by implementing a risk-based due diligence program, communicating with third parties, and

monitoring their compliance throughout the life cycle of the relationship. Third party agreements should also be risk based in terms of the type of provisions included and should be approved by the company's compliance officer or other appropriate representative.

Issues with Monitoring and Training

Most companies do not have a documented system for monitoring anti-corruption compliance internally or in their third parties. Monitoring is a mature activity and usually put in place after other elements of the program are up and running. Monitoring is essential, but there still seems to be some confusion about what monitoring means in practice. Companies should review their program processes on a regular basis to ensure that they are being followed and are effective. This can include analyzing data for trends, testing specific transactions, interviewing and surveying employees and third parties, and other activities designed to uncover control weaknesses. Routine monitoring helps compliance teams continually improve the program, and it sends a message that compliance is important.

There also is room for improvement when it comes to training. Many companies do not routinely train employees after an initial onboarding training, and even fewer give specialized training based on role or function (for example, to managers or specifically to accounting/finance or sales staff). Without ongoing, effective training and communication, a compliance program will likely fail. We recommend that companies replace once-a-year, one-size-fits-all training—still the most common training type—with shorter, more frequent, and more engaging training modules and other communications, as well as training tailored to risks, roles, and responsibilities.

No anti-corruption program is perfect. However, taking a risk-based approach, assessing business processes against leading guidance to identify strengths and weaknesses, and working on continual improvements can go a long way toward mitigating issues and positioning companies for success.



Leslie Benton

Leslie Benton is a Vice President at Ethisphere, where she engages with global companies on assessing and benchmarking anti-corruption programs and building capabilities across organizations and with third parties. Additionally, she leads the anti-corruption initiatives at the Center for Responsible Enterprise And Trade (CREATE.org); and is one of the ISO 37001 Anti-Bribery Management Systems Standard drafters as a member of the U.S. Technical Advisory Group to the ISO committee developing ISO 37001.

She is a former Senior Vice President of Levick Strategic Communications, where she led the anti-corruption and compliance communications practice. Previously, she was the Senior Policy Director for the U.S. chapter of Transparency International, where she spearheaded the chapter's outreach to the U.S. Government, international institutions, and the private sector.