



Corruption Probes in LatAm Aren't Just Local Issues

Bribery-related headlines have been circulating around Latin America more frequently within recent years. Preparing for high profile, wide-ranging probes, and anticipating local enforcement efforts alone is not enough to mitigate the legal and reputation risks surrounding bribery and corruption. Listed below are five ways to mitigate risks relating to Foreign Corrupt Practices Act (FCPA) investigations in Latin America.

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Bribery-related headlines have been swirling in Latin America in recent years, most recently in Argentina. In the wider region, prosecutions are becoming more vigorous and the targets are broadening to entities based in the region or those simply operating there. In particular, cross-border cooperation among law enforcement authorities appears to be at an all-time high, with local Latin American authorities and U.S. regulators joining their enforcement efforts on large-scale corruption probes such as Operation Car Wash, which has amounted to billions (USD) in monetary penalties paid by those implicated.

This acceleration in joint enforcement is elevating the risks for all companies and individuals with business in Latin America. It also calls for a more global and collaborative defense strategy. Particularly in high-profile, wide-ranging probes, anticipating local enforcement efforts alone is not enough to mitigate the legal and reputation risks surrounding bribery and corruption.

Here are five ways to mitigate risks relating to the Foreign Corrupt Practices Act (FCPA) investigations in Latin America:

Conduct an effective internal investigation.

Witness interviews are crucial to any internal investigation but also present special challenges in cross-border scenarios. An effective solution is to pair a local, native-speaking lawyer with an experienced investigator trained in U.S. law. This allows local counsel to focus on nuances in a witness's testimony and spot any potential issues with local law, while U.S. counsel can steer the interview toward uncovering any potential liability. Indeed, this global-to-local collaboration will provide a critical vantage point for potential targets throughout a corruption probe, as local laws, strategies and stakeholders can vary greatly across jurisdictions.

Allocate resources and identify stakeholders.

Numerous stakeholders will likely have interests in a company's response to bribery allegations, including shareholders, individual managers, board committees, labor unions, contractors and vendors. Counsel must understand which stakeholders are relevant to their role and which may require separate counsel. More broadly, there must be a clear pathway for escalating major concerns to the company's leadership and — if publicly traded — the market.

Preserve data.

Immediately following an allegation, a company must preserve, retrieve and review the information that sheds light on the underlying facts. Mapping what data already exists and where that data is actually located is crucial and minimizes spoliation claims down the road.

Know your third parties.

When dealing with third parties, ignorance is not a defense. Failure to know with whom one is engaging — even indirectly — is no protection against liability. As a result, companies must fully understand the extent of their third-party relationships and document all efforts. Pay keen attention to red flags, such as requests for payments in advance of rendering services, payments to differing third parties, vague descriptions of services, and payments disproportionate to the services provided.

Make the right disclosure at the right time.

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Once misconduct is established, crucial decisions must be made: whether to report the conduct to enforcement agencies and when to do so. If corporations move slowly, employees, competitors or whistleblowers might report misconduct to law enforcement and regulators first. Even where self-reporting is not mandatory, corporations are sometimes incentivized to self-report and cooperate with prosecutors, particularly in light of the Department of Justice's "Yates Memorandum" and the FCPA Pilot Program, both of which aim to motivate companies to voluntarily self-disclose FCPA-related misconduct, cooperate with authorities, and remediate flaws in controls and compliance.

In light of the amplified scrutiny by U.S. and non-U.S. regulators on Latin America operations, a unified and coherent strategy by counsel with deep experience in each relevant jurisdiction is more necessary than ever. There is no sign that this scrutiny will fade soon, so companies and individuals doing business in these regions should take steps to understand the new anti-corruption regime and the expanding web of potential liability related to corruption and fraud.

About Kobre & Kim's Latin America Team

Kobre & Kim has significant experience with international disputes and investigations into alleged bribery, corruption, money laundering and Foreign Corrupt Practices Act (FCPA) violations. We have been involved in some of the highest-profile enforcement actions by U.S. enforcement agencies, including representing a Brazilian family in asset forfeiture matters in the UK, related to criminal proceedings in Brazil in connection with "Operation Car Wash." In the highly publicized "FCPA sting trial," our firm obtained client acquittal on allegations of violations of the act, as well as a mistrial relating to the remaining charges. Our Latin America team includes several former U.S. Department of Justice prosecutors working out of our U.S. offices as well as our Buenos Aires Investigation & Trial Support Center. Team members speak Spanish and Portuguese and are sensitive to cultural nuances, regional business practices and relevant local laws.