



Inside

- ▶ Laws & regulations
- ▶ Impact
- ▶ Extraterritorial Reach
- ▶ How to comply
- ▶ Penalties
- ▶ Incentives & Voluntary Disclosures

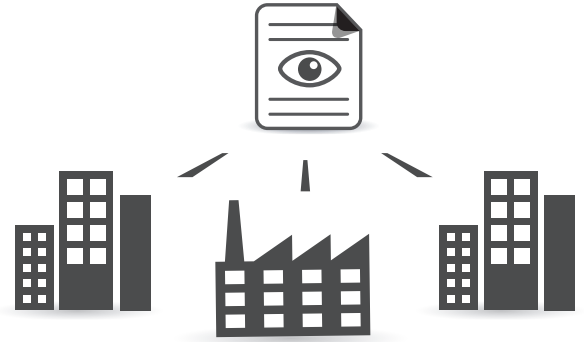
Corruption in the Americas

At a glance



Laws and Regulations

Impact



ARGENTINA

Acts of corruption are addressed under the Argentinian Criminal Code (Section 162-163 & Chapter IV, Section 172). These sections of the criminal code relate to theft, fraud, improper influence and any related conduct that could lead to an improper gain for the employee and a correlative loss for the employer.

The Criminal Code addresses corruption in general terms and is not intended solely for application in the workplace.

BRAZIL

The Brazilian Anti-corruption Act (Law 12,846/2013), and the Brazilian Criminal Code are the main statutes addressing corruption.

Under the Brazilian Anti-corruption Act, which is focused on legal entities, an exhaustive list of conduct that constitutes harmful acts against the public administration are mentioned.

The Criminal Code, which is solely applicable to individuals (and not to legal entities), establishes that bribery and traffic of influence in international business transactions are crimes.

CHILE

The Chilean Criminal Code (Art. 248-250, 248 bis, 250 bis A) and Law No. 20,393 are the main laws addressing corruption.

Bribery is the main act covered under the Criminal Code.

Law No. 20,393 establishes the criminal liability of legal entities in cases of money laundering, financing of terrorism or bribery.

COLOMBIA

The Colombian Anti-Corruption Statute (Law 1474/2011), the Medical Ethics Law (Law 23/1981), the General Disciplinary Law (Law 734/2002) and the Colombian Criminal Code (Law 599/2000) are the main corruption laws affecting employers.

The Anti-Corruption Statute mainly addresses unfair business practices when dealing with public servants and the healthcare sector. Specifically Article 34 imposes measures against legal entities that sought to benefit from the commission of unlawful conduct.

In general, private corruption (Anti-Corruption Act, Art. 16) and bribery (Criminal Code Art. 133, 405-407, 433) are the most important unlawful acts covered under the legislation.

MEXICO

The main anti-corruption law is the Federal Law Against Corruption in Public Procurement (Ley Federal Anticorrupción en Contrataciones Públicas) (2012).

The main act prohibited by the Mexican Anti-Corruption Law is bribery (of public officials, for public contracts, etc.). This includes bribery of non-Mexican government officials.

PANAMA

The Inter-American Convention against Corruption, (Law 42)(1998), the United Nation Convention against Corruption, (Law 15) (2005) and the Criminal Code (Art. 347, 354) are the main Anti-Corruption laws in Panama.

The legislation covers the offer, promise or delivery to a public officer of a gift, promise, money or any benefit or advantage to perform, delay or omit an action that is related to the public office, position or employment, or in violation of his or her legal obligations.

PERU

The main Anti-Corruption laws in Peru are in Section II, III and IV of Chapter II, Title XVIII of the Criminal Code (art. 382 through 401-B)

The unlawful acts covered under the legislation are: Collusion (Art. 384), Peculation (Art. 387), Proper Passive Bribery (Art. 393), International Passive Bribe (Art. 393-A), Improper Passive Bribery (Art. 394), Generic Active Bribery (Art. 397), Active Transnational or International Bribery (Art. 397-A).

UNITED STATES

The main anti-corruption law in force in the United States is the Foreign Corrupt Practices Act (FCPA) (15 U.S.C. §§ 78dd-1, et seq).

The FCPA has two principals, to prohibit the bribery of foreign officials and to establish certain accounting requirements.

ARGENTINA

A corrupt act will be judged under the Criminal Code; if found guilty, employees could be dismissed with just cause.

BRAZIL

The Brazilian Anti-corruption Act states that legal entities will be liable for acts against the national or foreign public administration regardless of intent or even knowledge of illegal acts practiced by any of its representatives or employees to the company's benefit. Because of this, employers must ensure that all personnel and representatives of the company are frequently trained and reminded of prohibited conducts. Also, it is important that employers devise a whistleblower hotline, so that the company can better oversee suspicious activities of its personnel and representatives.

CHILE

Law No 20,393 provides sanctions to the legal entities when the Owners, CEOs, Representatives, Administrators, Supervisors and those who are under the direction or supervision of the above mentioned persons commit one or more of the crimes under this law.

A company must be aware of its internal politics. When a company's environment promotes corruption, the Chilean Public Prosecutor's Office may consider supervisors, administrators, CEOs, etc. as responsible parties. Sanctions can include, among other things, the dissolution or the cancellation of the legal entity.

COLOMBIA

Because of the requirements set forth in the International Anticorruption Legislation for multinational companies, Colombian employers are becoming aware of the need to implement strong policies in order to retain important business. As a consequence, employers are beginning to implement compliance programs, ensuring compliance with both international and local anti-corruption legislation.

MEXICO

Since the Mexican Anti-Corruption Law was enacted, individuals and companies are more aware of the direct or indirect offering of money or gifts in order to obtain or maintain a business advantage in the procurement of public contracts.

As they are subjects of the Mexican Anti-Corruption Law, Mexican and foreign entities have to ensure that they can detect and prevent corrupt conducts and limit risk under the growing number of international anti-corruption laws, such as the FCPA, and the UK Bribery Act.

PANAMA

The main impact of Panama's Anti-Corruption legislation on employers is imprisonment and administrative sanctions (fines, dissolution of the business) for companies that engage in corrupt practices.

PERU

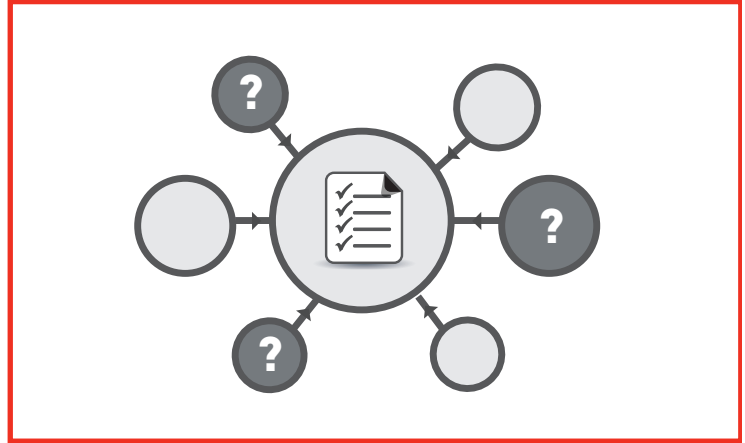
A corrupt act by an employee or public official, if in connection to the employment, can bind a company. If held responsible an employer can be condemned to pay civil reparation to the State.

UNITED STATES

There are several FCPA-driven costs and considerations that affect companies covered by the FCPA. The FCPA also requires that companies that have their securities registered in the U.S. stock exchanges, maintain proper records and implement adequate internal controls to facilitate transparency. The FCPA also subjects companies to an increased risk of exposure to an enforcement action and related costs. As a result of the immediately aforementioned and other effects of the FCPA, companies will occasionally have to forego business transactions and opportunities that otherwise would have been possible.

Extraterritorial Reach

How to comply



ARGENTINA

There is no extraterritorial reach for criminal matters.

BRAZIL

Foreign legal entities may be held liable for conduct carried out in Brazil or abroad, so long as they have headquarters, affiliates or any type of representation in Brazil, even on a temporary basis.

On the other hand, Brazilian legal entities will be liable for acts against a foreign public administration even if performed outside of the Brazilian territory.

CHILE

Any person who is involved in the bribery of a foreign public official, in order to obtain or support a business in an international transaction, shall be punished under the Chilean law. This crime is considered to establish the criminal liability of the legal entity.

COLOMBIA

Pursuant to Article 16 of the Criminal Code, there are some specific circumstances where Colombian law may be applied abroad, mainly considering the value or right transgressed with the conduct and the nationality of the responsible individual. For example, crimes against the Colombian Republic (i.e. bribery) or against the Colombian public administration, regardless of the subject's nationality, could be punished under Colombian criminal judge's ruling, even when committed abroad.

Bribing a Foreign Public Official is punishable as a criminal offense. Therefore, granted that a national or a resident with companies incorporated in Colombian territory, have bribed directly or indirectly a foreign public servant, such person would be punished.

MEXICO

The Mexican Anti-Corruption law applies broadly to Mexican and non-Mexican companies and individuals engaged in federal government contracting in Mexico, including bidders, participants in tenders, request for proposal recipients, suppliers, contractors, permit holders, concessionaires and their shareholders, and agents whether based in Mexico or abroad.

PANAMA

There is no extraterritorial reach of Panama's Anti-Corruption legislation.

PERU

Public officials or employees of private companies (regardless of whether they are foreigners or employees of legal entity domiciled outside of Peru) can be judged under Peruvian law if they committed or were an accomplice to a corrupt act during the exercise of their function or if the State is damaged by the crime.

UNITED STATES

The FCPA applies broadly to United States companies and their personnel, foreign companies with shares listed on a U.S. stock exchange, and United States citizens or any person while in the United States Territory. A foreign national or business may be held liable under the FCPA for any act that promotes a corrupt payment within the United States.

ARGENTINA

Employers should construct a code of conduct and compliance plan targeting any behavior that may be a labor offense. We suggest a clear and precise description of the actions that are allowed and disallowed, along with actions that should be recorded or approved (such as social invitations, travel expenses, non-valuable gifts, etc.).

BRAZIL

There is no current law specifying the necessary elements of compliance program. Nevertheless, it is common practice to involve senior levels of management in the program; distribute a code of conduct to all employees; periodically carry out risk analyses to update the program; maintain records that faithfully describe transactions; establish clear disciplinary measures for those who violate the company's internal rules; have specific rules regarding due diligence when participating in mergers and acquisitions, and when executing risky contracts.

CHILE

Law 20,393 considers that the management and supervisory duties of a company had been properly fulfilled when, before the commission of a crime, the legal entity has adopted a compliance model to prevent crimes. For such purposes, the legal entity must appoint an independent compliance officer, with sufficient means and abilities. The program must be monitored to make sure the company fulfills its requirements.

The implementation of a compliance program is not a simple modification of a company's Code of Conduct. It involves an additional set of measures such as the appointment of a crime prevention officer and modification of supplier agreements, among other things.

COLOMBIA

At a minimum, a successful compliance program must include a firm commitment from the respective company's top-level managers to sanction corruption within the organization; knowledge of how clients and partners were retained along with clear evidence of why the compliance department disregarded any risk; specific sanctions for conducting any unfair business practices; specific rules for gifts (special section regarding public servants); comprehensive accounting and financial policies.

MEXICO

Most companies conducting business in Mexico implement self-regulation mechanisms, including the instrumentation of internal controls and programs to develop an ethical culture within the organization in three main topics: business courtesies and facilitating payments; selection of business partners and consultants; and record-keeping, accounting and business practices.

PANAMA

Although a compliance program is not legally required, a successful program will include policies and procedures that guide the employees in abiding by the legal provisions and internal rules; an appointed compliance officer in the executive level who will be in charge of monitoring and implementing the program; training sessions for employees on the legal provisions and internal rules.

PERU

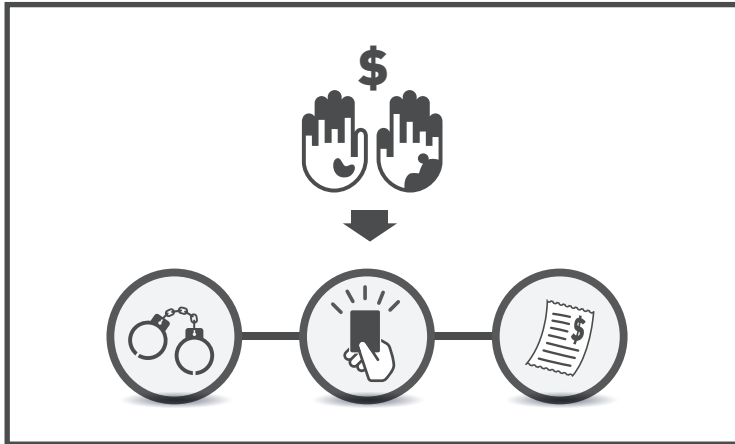
There is no legal obligation for companies to implement a compliance program to prevent corruption. However, it is advisable that employers draft internal rules that take into account the corruption risks associated with the company's core business.

UNITED STATES

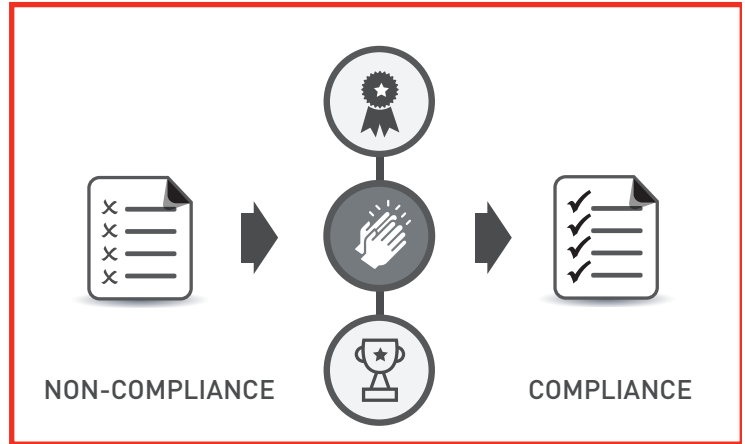
The primary purpose of an FCPA compliance program is to prevent violations before they occur and if a violation has occurred, to detect the violation promptly.

Elements of a successful compliance program include regular auditing practices, and documentation policies to prevent, detect and correct any violations of the FCPA; a Code of conduct, in the form of official policies and implementing procedures, established by senior management; periodic training to ensure awareness throughout the company of the requirements of the FCPA and of the company's policies and procedures for meeting these requirements; a confidential reporting of violations; an internal investigation process; sanctions and penalties for employees who violate the FCPA Code of Conduct; and periodic review of compliance program to ensure its effectiveness.

Penalties



Incentives & Voluntary Disclosures



ARGENTINA

Non-compliance, giving or receiving favors or any deliberate action that constitutes corruption could represent a labor offense and depending on the type of conduct, it could lead to termination with just cause. If said action is provided for in the criminal code, then a criminal sanction could also be applied.

BRAZIL

Companies found guilty of harmful acts against the public administration are subject to various penalties according to the Anti-corruption Act, such as fines; loss of goods, rights or amounts that represent the advantage or benefit directly or indirectly obtained through the illegal act; suspension or partial suspension of the company's activities; mandatory dissolution; prohibition on receiving incentives, subsidies, subventions, donations or leases of public entities or public financial institutions or entities controlled by the public powers, for up to five years.

Individuals may be punished with both fines and imprisonment for up to twelve years.

CHILE

The criminal penalties that may be applied to a legally convicted entity include but are not limited to, dissolution of the legal entity or termination of its legal personality (with certain exceptions for public owned enterprises and services); temporary or perpetual ban on executing acts or contracts with public agencies; partial or complete loss of tax benefits; fines.

COLOMBIA

Sanctions for individuals may include: imprisonment, pecuniary fines and disbarment of the exercise of public functions.

Penalties for legal entities may include: pecuniary fines, cancellation or suspension of its commercial registration before the chamber of commerce.

Both individuals and legal entities could be prone to civil liability and potential prohibition from future participation in public procurement procedures when dealing with government entities.

MEXICO

If individuals or companies are found to have violated the Mexican Anti-Corruption Law, they may be subject to substantial monetary penalties. Fines range from roughly \$5,000 to \$250,000 for individuals and \$50,000 to \$10 million Mexican pesos for companies.

Unlike other anti-corruption laws, the Mexican Anti-Corruption Law does not provide for the disgorgement of profits. However, the maximum fine may be increased by up to 50% if the benefit obtained by the illegal conduct exceeds the maximum fine. Offenders may also be prohibited from future participation in government contracts.

PANAMA

Employers that engage in bribery can be sanctioned with 3-6 years imprisonment.

PERU

Employees engaging in an act that violates the employer's internal rules can be dismissed with cause.

Employees engaging in corruption may be subject to the criminal code. In some cases employers may be held liable for an employee's misconduct.

UNITED STATES

The FCPA provides both civil and criminal penalties to corporations and individuals for violations of its accounting and anti-bribery provisions. In addition to the civil and criminal penalties, the U.S. may suspend or revoke the benefits of doing business with an agency of the United States. Individuals who willfully violate the bribery provision may receive no more than a \$100,000 fine and five years in prison. Individuals who violate the accounting provision of the FCPA may be fined up to \$5,000,000 and imprisoned up to twenty years. A corporation can be criminally liable for a fine up to \$2,000,000 for a violation of the anti-bribery provision and up to \$25,000,000 for a violation of the accounting provisions.

In addition to the criminal penalties, the FCPA provides for civil penalties of up to \$10,000 for violation of its anti-bribery provisions.

ARGENTINA

There are no incentives for companies to establish effective compliance programs or for voluntarily disclosures of corruption.

BRAZIL

The Brazilian Anti-corruption Act has rules that both stimulate the adoption of compliance programs and the disclosure of violations.

The Act establishes that the existence of an effective compliance program is a mitigating factor when calculating sanctions related to harmful acts against the public administration.

The Act also sets forth provisions regarding leniency agreements, which may reduce up to two-thirds the amount of the applicable fine, and may grant immunity to the company with regard to the penalty of prohibition of receipt of incentives, subsidies and amounts from public entities.

CHILE

The effective implementation of a compliance program that meets the requirements set forth by Chilean law exempts the legal entity of any criminal liability (Article 3 of Law 20,393).

An effective implementation also reduces the risk of the commission of corporate crimes; the compliance program can also be used to prevent the commission of other crimes while strengthening the position of the responsible company and its image.

COLOMBIA

Having an effective compliance program or voluntarily disclosing violations before the competent authorities may lessen the liability of legal entities (Article 34 of the Anti-corruption Statute).

MEXICO

Although the Mexican Anti-Corruption Law does not provide for incentives in favor of companies that establish effective compliance programs, notably, fines may be reduced by up to 70% for offenders who self-report violations to Mexican authorities.

PANAMA

There are no incentives for companies to establish effective compliance programs or for voluntarily disclosures of corruption.

PERU

There is no incentive for a company to implement a compliance program. However, individuals in an investigation could be under protection as "effective collaborators" (Art. 473 "c" of the New Procedural Criminal Code) if they:

- (i) abandon their criminal activities,
- (ii) admit the facts imputed and
- (iii) provide the Prosecutor's Office accurate information to clarify the investigated facts.

Effective collaborators can obtain an exemption, reduction or suspension of the penalty to which he could be condemned.

UNITED STATES

When a corporation violates the FCPA they are subject to a criminal penalty. The court will use a set of sentencing guidelines that takes into account a multitude of different factors to come up with a culpability score. The higher the culpability score, the more severe the punishment will be for the FCPA violation. An effective compliance program will reduce the culpability score of a corporation during the sentencing procedure.

The DOJ and SEC have announced an official policy of favorable treatment of voluntary disclosure with regard to FCPA violations. Self-reporting FCPA violations will often result in fines well below the sentencing guidelines.



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