

ETHISPHERE™

SPECIAL REPORT ON LATIN AMERICA

In Partnership with
ControlRisks



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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.

Latin America is a region that provides both unique challenges and opportunities for companies' compliance programs. Readers of this publication are likely familiar by now with the Corruption Perceptions Index, published by Transparency International, and the various shades of red that cover much of Latin America on that map. However, while challenges such as corruption, data security, and other perennial compliance risks continue to require focus for companies operating in the region, for the last several years Latin America has presented some of the most rapid and interesting change in the ethics and compliance field.

This comes in part from fallout and improvements stemming from well-known enforcements such as Operation Car Wash and other similar regulatory actions in Colombia, Peru, and elsewhere in the region. But it also stems from an active and engaged community of ethics, compliance, and legal professionals committed to putting in place some of the best compliance practices worldwide and using ethics and compliance to help drive greater business opportunities for their organizations.

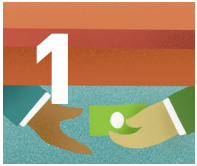
There's reason for optimism within the region, too. As Geert Aalbers and Mason Pan of Control Risks—the co-publisher of this report alongside Ethisphere—point out in their article on page 5, companies in Brazil are in fact able to roll out some of the most sophisticated compliance technology programs in the world. This is in part because many of these companies are developing programs from the ground up and don't have legacy systems and processes that need to be removed and replaced—a fairly painful and arduous task in many global organizations that have become complacent in their ways.

Nevertheless, despite many of these positive steps, there remain significant risks to companies doing business in the region. The other contributors to this publication, including compliance professionals from Grupo Bimbo, Fidelity National Financial, Walmart, ABB, VLI, and Ingersoll Rand, share some of their insights and experiences in building a strong program in Latin America. On the following pages you will hear their thoughts on how companies can set themselves up to be successful, including through building a network of local experts, familiarizing yourself with litigation trends, and creating a strong, consistent culture of ethics.

We hope that you enjoy this publication and find the contributions here helpful to your own ethics and compliance efforts in Latin America. As always, we look forward to hearing from you throughout the year and learning from your experiences in operating across the region.



Stefan Linssen
Chief Content Officer
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Written by Geert Aalbers and Mason Pan, Control Risks



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Written by Gary Zaugg, Ingersoll Rand

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Artificial Intelligence and Big Data Are Changing Anti-Corruption Efforts

...and it starts with Brazil

Written by
Geert Aalbers and Mason Pan



Anti-corruption enforcement has been intensifying across Latin America ever since the Operation Car Wash investigations made headline news in March 2014. But Operation Car Wash is just one of several major regulatory probes involving state-owned entities, private companies, politicians, lobbyists, and other intermediaries accused of wrongdoing in a number of industries, including oil and gas, electricity, financial services, and infrastructure. And while the Operation Car Wash investigations may be winding down in Brazil, their effects are increasingly being felt throughout Latin America. In countries such as Colombia, Peru, and Argentina, other probes are just beginning to ramp up.

Looking beyond the spectacular media reporting of the well-orchestrated police operations across Brazil and the steady year-on-year deterioration of the corruption perception index as reported by Transparency International, we see a silent revolution at a growing number of private and public sector companies. Compliance is now a board-level issue for many major Brazilian companies. Implementation of effective programs to prevent, detect, and remediate fraud and corruption risks is now a top priority for boards and executive teams alike. In this evolving business climate, technology is set to radically alter the accuracy, speed, and efficiency of future compliance programs.

The arrival of big data and artificial intelligence technology in the compliance, anti-corruption, and anti-fraud space is a real game changer. Top Silicon Valley companies and financial institutions have used these technologies for many years, but a strong business case for their use had evaded the compliance function. Brazil, however, is now a fertile ground for the compliance-related adoption of these technologies. There are several important reasons for this. First, most companies in the country are starting from scratch with their programs, which means they can adopt the latest technologies without disrupting incumbent processes and systems—sort of like jumping from faxing documents to 5G data transmissions. Second, Brazil is a tech-savvy culture with some of the highest internet penetration levels and social networking density in the world, creating a natural environment for new technologies to prosper. Third, due to having one of the most cumbersome bureaucracies in the world, Brazilians have become creative at using technology to overcome

such obstacles. The fact that these technological solutions have become more powerful and cost-effective makes their adoption much more palatable for companies that have been in cost-cutting mode while navigating the longest recession in Brazilian history. Finally, anti-corruption watchdogs in Brazil are in learning mode and increasingly receptive to technology- and analytics-enhanced compliance solutions.

So how can technology help corporations deploy a digital dragnet to catch bad actors? Almost everything has a digital footprint in today's world: bribes involve money, and money leaves a trail. Just as everything lives forever on the internet, a corporation's financial transactions and employees' communications, decisions, and behaviors are captured in databases, servers, phones, the cloud—the list goes on. The idea is to essentially Hoover up broad sets of data available to the company, including financial data, emails, chat applications, HR databases, social networks, and public records/media. With this data, companies can run analytics to identify and correlate

Technology is set to radically alter the accuracy, speed, and efficiency of future compliance programs.

potentially problematic areas or issues, enabling some level of predictive capability. These data models and algorithms can be customized by corporations to flag any unusual patterns, trends, and outliers for human review, getting ahead of potential issues before they manifest into serious problems.

Artificial intelligence can automatically learn from previous instances of bribery and fraud and look for data with similar characteristics. It's no longer just about finding the needle in the haystack, but automating the ease and efficiency of finding similar needles. For example, a group of executives implicated in one corruption scheme may have orchestrated other as-yet-undiscovered schemes, so it benefits the corporation to check for similarly suspicious patterns to ensure a clean house. Compliance officers can leverage institutional knowledge of existing control weaknesses and surmise how someone with an intent to defraud would take advantage of those gaps. In this scenario, an investigator could define the evidentiary data profile of fraudulent transactions and ask the AI program to query the data for matching records. This type of "machine learning" grows more powerful the more it is used and the more data that is fed into it. Each iteration generates feedback that improves accuracy and precision.

Advances in data analytics and increasingly interconnected people, tools, and services are allowing investigators to triage and analyze a large amount of previously unavailable and disparate information. For example, using data from accounting systems, email servers, and public business databases, an analyst can map communications to third-party individuals who are beneficial owners of shell companies that have received suspicious payments or funneled bribes to an official. Location data from cell phones can identify whether individuals were near alleged meeting locations of cartel members engaging in

As data volumes grow exponentially and geographic footprints expand, compliance departments need more than just additional headcount to effectively monitor problematic behavior.

anti-competitive behavior. Monitoring devices on corporate computers can detect when employees access suspicious websites and record keystrokes or take screenshots. Admittedly, these technological advancements do carry implications for personal privacy. However, when used appropriately and legally, with properly configured anonymization settings, they can be powerful deterrents against fraud and corruption.

As data volumes grow exponentially and geographic footprints expand, compliance departments need more than just additional headcount to effectively monitor problematic behavior. The deluge of information will overwhelm what a single individual, or even a team of individuals, can process. A technology-enabled solution will deliver greater productivity, accuracy, objectivity, and speed of analysis; prioritize mitigation and remediation measures; and allow skilled and finite personnel resources to focus on higher-level tasks.

We are several years away from full-scale artificial intelligence—human judgment, ethics, and intervention will still be required in the fight against fraud and corruption for at least the near future. But the level of sophistication has changed, and the business case is solid. The next time an executive pledges to take on corruption, machine learning will be a powerful tool to help fulfill those promises.



Geert Aalbers is Senior Partner and Head of Control Risks' Brazil office. Geert has 20 years of experience working in Latin America and has an in-depth understanding of the region's business environment and cultures. He leads on major regulatory matters and investigations into fraud and ethics breaches.



Mason Pan leads the Data Analytics group at Control Risks for the Americas region. Mason helps global corporations and law firms in matters relating to regulatory compliance, fraud investigations, and risk management by using analytics-led solutions to provide real-time business insights on core business risks.

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Mergers and Acquisitions: A Latin American Perspective

Interview with
Ignacio Stepancic of
Grupo Bimbo

Interview by
Greta Baranowski



Merger and acquisition activity can expose an organization to a whole host of risks. In the following interview, Ignacio Stepancic, Global Compliance Director of Grupo Bimbo, shares his thoughts about how to prepare for a merger or acquisition and make sure it is executed smoothly.

Grupo Bimbo is no stranger to merger and acquisition activity. When you're looking at a potential acquisition target (particularly in Latin America), what are your top two or three areas of risk or concern?

Other than financial and tax risks, for Compliance, our main concerns relate to all government relationships, direct or through third party intermediaries, the effectiveness of their compliance program (if any), and integrity background checks of shareholders and top management to identify risks. Most of the countries where we have business units are countries that, according to Transparency International, represent a high risk, which requires us to be very careful to prevent the risks associated with the acquisition.

Can you explain your pre-transaction due diligence process in Latin America?

The Compliance pre-transaction due diligence during a M&A covers interviews with the shareholders, top management, and all high-level people involved. The purpose of the interviews is to get a deeper understanding of the business, the level of their compliance program (if any), and where to focus the transactions to be further reviewed. If we interact with an intermediary for the transaction as business funds or legal representatives, we also have interviews with them. We check policies and procedures associated with the companies involved, and of course, perform an integrity background check of the related parties as well as the final beneficiaries. This is essential to know who we are doing business with.

After the transaction, what is your process for integrating the acquired organization into Grupo Bimbo? What are some common problems, and how do you handle them?

In Grupo Bimbo we call them the “100 days after.” It is in this 100 days where we begin with assigning training to all new associates, including Code of Ethics, Global Integrity Policy, and Conflicts of Interests. From a monitoring standpoint, Internal Audit performs a diagnosis of the acquired business to identify further risks to mitigate at the short and medium term. One of the main challenges is when the acquired company is very small and family owned, where the culture is far away from internal control and compliance risks awareness. Our business is closely related to retail. This is why we must invest part of our time in this “100 days after” to implement policies and procedures, IT solutions, and monitoring and training for the companies we acquire in order to analyze the risk and mitigate the problems associated with the handling of cash. In my opinion, in many businesses this is a very important issue that is not properly analyzed at the time of an acquisition in South America.

Likewise, what is your post-transaction monitoring process in Latin America? What metrics do you use? What are the most common red flags?

After acquisition, from a compliance perspective, we begin with a risk assessment to identify priorities and the most important risks to mitigate. For example, we acquired a company in India, where we had never had operations before. After the 100 days mentioned above, it was important to understand the business and their main challenges. Therefore, we performed a risk assessment with external sources who understood the country

One of the main challenges is when the acquired company is very small and family owned, where the culture is far away from internal control and compliance risks awareness.

Due diligence of the company, but also the shareholders, owners, and top management is crucial to identify risks and the beneficiaries prior to negotiations.

situation relating to compliance. After the risk assessment, the Compliance team will visit the operation to do a supervision of the whole business, including high-risk processes such as onboarding, training, third party relations, donations, contracts, etc. The supervision process covers interviews, transactional review, and analytics.

What advice would you give to a company that is looking to initiate a merger or acquisition transaction in Latin America?

The best advice is to analyze who you are doing business with. Due diligence of the company, but also the shareholders, owners, and top management is crucial to identify risks and the beneficiaries prior to negotiations.

Throughout Latin America, legal standards for doing business are evolving. Mexico has recently passed new anti-corruption laws, Brazil is entering a new era of discussing corruption more openly, etc. How have these developments affected M&A activity, and how do you anticipate they will affect M&A activity in the future?

Rather than affect the M&A activity, I believe all these laws and legislation emerging around Latin America help companies work in a more transparent environment and focus more efforts in Compliance, whether in an acquisition, JV, or in any transaction. Putting efforts and resources in the due diligence process during a M&A will help companies raise the standards of their compliance program and mitigate the risks of acquiring shell companies or companies with illegal backgrounds.

Thanks so much for sharing your expertise with us.



Ignacio Stepancic

Ignacio Stepancic is the Global Compliance Director for Grupo Bimbo. He is responsible for the design, implementation, management, and control of compliance policies and procedures in 32 countries. He also works with internal and external investigation processes in matters of integrity, M & A integrity due diligence, internal and external training, integrity background checks, employee training, and antitrust issues.

Litigating in Latin America

Written by

Rodolfo Rivera of Fidelity National Title



No matter where you are located, litigation can be complex, time consuming, and unpredictable. Litigating in Latin America presents its own unique set of challenges. Nearly all countries in the region follow a civil law system. It is easy for those of us used to working in common law countries to feel overwhelmed or even out of place. Failure to understand the cultural and legal differences is a recipe for disaster if you're not careful. Here are some of the most important strategies for effectively managing litigation in Latin America.

Be prepared and become educated

Do do your homework, and always be prepared even if there is no pending litigation. Understand how evidence is presented, who can and cannot testify, and whether the evidence is presented before a judge or an attorney law clerk. Be prepared to deal with the fact that no discovery is allowed and that evidence is presented piecemeal. It would surprise you to learn that when the client is testifying the attorney is not permitted to be present. In Mexico, for example, once pleadings are filed they cannot be modified except under some rare exceptions. Some countries view conflicts of interest differently—do not ask if there is a conflict, but rather, has the firm

represented your adversary in other matters? In some areas, ex parte communications with judges are almost expected, which is counterintuitive to US lawyers and would violate the canons of ethics in the US legal system. In fact, it can be considered malpractice not to engage the court in ex parte communications. Obtain a brief opinion from local counsel describing the legal systems, how trials work, how evidence is presented, etc.

Hire good local counsel

There are many good attorneys in Latin America. The problem is finding them. Should you retain a firm with a global presence or a homegrown local firm? I have had success and failures with both. Focus on the attorney and not the firm. Some of the attorneys that have obtained great results have been small firm practitioners. In cases where a global firm is retained, I work directly with the in-country attorney handling the matter. When presented with a matter, talk to several law firms and then decide after you have listened to several points of view. It is unfortunate that lawyers in Latin America tend to tell foreign clients what they think the clients would like to hear. It is also not uncommon for lawyers to guarantee results. Sometimes, the advice given by some lawyers borders on the ridiculous. Others will use the fear factor and profess that they are the only lawyers in the country who can win the matter.

A law firm is only as strong as its weakest lawyer, and retaining a big-name firm will do you no good if you end up with the weak link.

Be present

Do not blindly rely on the attorney to handle the matter. Attending important hearings and trials helps you to evaluate his or her performance. It also helps create a meaningful relationship with your local counsel. Many lawyers perform better when the client is present in the court room. You become more than just a voice on the telephone. The more control you take, the more likely you are to get good results. Being present helps me understand how the case is progressing. If you don't speak the local language, don't let that stop you. Hire an interpreter. Never use the attorney as an interpreter. He or she needs to focus on the case. When I work in Latin America, I have the advantage of speaking Spanish, but I've also attended court proceedings in the Czech Republic and Romania with the help of a translator by my side.

Working closely with local counsel creates two sets of eyes on the matter. In one case, the local lawyer didn't want to interview a witness before the trial. He believed that the testimony of that particular witness was going to be adverse—"So what's the point?" he said in Spanish. Good or bad, I wanted to know what the witness was going to say in court; therefore, I insisted that

Failure to understand the cultural and legal differences is a recipe for disaster if you're not careful.

Always question the lawyers who work for you, to make sure they are acting in a way that represents you and your company with integrity. Hold them accountable for their actions.

the interview take place. As it turned out, his testimony was favorable and key to winning the case.

Ask questions

It is easy to feel like you are at a disadvantage when working with Latin American legal systems. Do not be shy. When in doubt, always get a second opinion from another firm. As a rule I do not retain the law firm providing the second opinion. This is the only way to ensure the neutrality of the opinion. Also, be wary of absolutes. If an attorney tells you that this is how things "always" work or that a favorable outcome is a certainty, be skeptical. No one can guarantee a result anywhere in the world.

Be flexible—but not too flexible

It's true that the legal systems in Latin American countries do not work the same way as the American system. Trial procedures are different. You will have to adjust your usual way of thinking. But that doesn't mean you should adjust your ethics or good judgment. "That's just how we do things here" is no excuse for engaging in unethical conduct. Always question the lawyers who work for you, to make sure they are acting in a way that represents you and your company with integrity. Hold them accountable for their actions, and don't be afraid to end the relationship if you see red flags. Be abundantly clear that your company WILL NOT PAY BRIBES. The retainer agreement should be clear on this.

As more and more multinational companies develop a presence in Latin America, those companies will demand greater transparency and accountability from lawyers in the region. The US mindset will sink in—eventually. It's a matter of demanding high standards from local counsel and making sure you are as active as possible in the case. With these strategies, you can navigate the legal system ethically and effectively.



Rodolfo Rivera

Rodolfo Rivera is Chief International Counsel and Legal Hold Officer for Fidelity National Financial. He also manages all Fidelity's Immigration matters and litigation against the various companies owned by Fidelity. Some of his other articles have

been published in the ACC Docket, Lawyers Weekly, and Missouri Bar publications.

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Creating a Long-Distance Culture of Ethics

Interview with
Milton Nassau Ribeiro
of VLI Logistica

Interview by
Aarti Maharaj



Milton Nassau Ribeiro, General Counsel of the Brazilian logistics company VLI Logistica, is very familiar with the challenges of creating a culture of ethics. VLI Logistica's distributed and diverse workforce means that he has to take extra care to make sure the message of ethics and compliance reaches every employee. In this interview, he discusses how VLI builds and maintains its culture of ethics, as well as the changing ethical culture of Brazil as a whole.

How would you describe VLI's company culture?

Our company is very result oriented. It's a brand-new company, a company that is only eight years old, which means we had to define and start a brand-new culture. This culture is very results oriented and very strong in our values. We decided our values, and we are very strong in terms of ethics and respect to people. Results without giving up safety, ethics in every step we take, and respect to people are three key subjects that are very important to our culture.

Brazil is facing a huge and complete change in terms of how people view corruption and how they view the relationship between public agents and private companies.

How do you communicate your company culture and values to employees?

As an operating-based company, we have 80 percent of our employees without access to corporate email. So the most efficient way to communicate with them is through the leaders. We define our leaders as multipliers of our culture. Every time a leader starts a meeting, they talk about workplace safety, results, and our corporate values. We have two values that are very linked to ethics and compliance: "respect for people always" and "nonconformists that have the right attitude to solve problems". These two values have a huge connection with the ethics culture that we create in the corporation. Every leader is responsible for being a multiplier of this message.

You have a very geographically distributed workforce. How do you make sure everyone is hearing the same message?

We have 8,000 kilometers of rails, and we are in ten states—it's not easy to make sure everyone hears the message. We have three layers to try to meet this challenge. The first layer is having the culture of ethics at every site and in every letter and communication. We know we have to be walking the talk, in terms of how we work. The behaviors of leaders, our meetings, our communications, PowerPoints, and emails—they are always opportunities to express the ethics culture of the company.

The second layer is communication. We have to talk about this in meetings. Ethics and security are subjects we talk about on a daily basis, using examples. The communication must happen—not only between the compliance department and employees, but between every employee and every leader and their subordinates. Communication is very important.

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And third layer is controls. Despite the fact that we try to set a culture of ethics and communicate well, we sometimes have to go to the field and do an audit to see if people are really acting the right way. Only doing audits can create a culture where people are afraid, but when you put communication, defining rules, and creating a culture all together, and they are well received by employees. Those are the three layers we put in this very challenging task of creating a culture of ethics.

You said you use examples in your communication. Are these examples drawn from real events that happened at the company?

Yes. I think it's stronger. Every leader has a meeting with his staff where they discuss the urgent subjects of the week. And instead of discussing only the problems, they use those meetings to talk about security and compliance. We see—and the leaders

see—some small doubts that people have in terms of things like relationships with public agents and suppliers. This is a very rich way of communicating.

It's not just compliance in theory. It's very challenging to put compliance in real life, instead of rules on paper in a corporate office. It's challenging to give examples in which compliance and ethics dilemmas and doubts really happen, so employees can see what compliance really is. Not only a bunch of paper or questionnaires they have to answer.

What are your worries or concerns about your corporate culture?

In our company, people are very engaged and they love the company. Because of this, we are always reinforcing the importance of asking the leaders in case of any doubt. Our ethical rules are clear and are constantly communicated through our internal tools, and our leaders are always ready to clarify some doubt if people need.

How do you think Brazil's larger culture affects your culture of ethics at VLI?

Brazil has sensitive points in terms of corruption, but the good news is that everyone is talking about it now. Brazil is facing a huge and complete change in terms of how people view corruption and how they view the relationship between public agents and private companies. For the very first time, big shots are going to jail or being sued. This got people's attention, and they started to reflect about not only big examples of corruption, but the little examples of corruption that everyone can do on an everyday basis.

Looking to the future, do you think that this trend toward greater transparency and less tolerance for corruption will continue?

I am very optimistic. We are in a movement, like civil rights or environmental growth. I have kids, and they are much more concerned about civil rights and environmental rules than my generation was. I really think the same will apply to corruption and to ethics. People will tolerate this less than our generation. Of course, there are huge challenges. But in the long run, I think it's something people will not tolerate anymore. By talking about this, by having corporations that are concerned about this and having enforcement of the law for the first time in Brazil against corruption, I think the next generation will be more concerned and conscious about how bad corruption is for a company and a country.



Milton Nassau Ribeiro

Milton Nassau Ribeiro is General Counsel and Chief Integrity Officer at VLI and a professor at Fundação Dom Cabral. He holds a law degree from the Pontifical Catholic University of Minas Gerais and additional certifications from institutions

such as IMD Business School and M.I.T. Previously, he worked for Companhia Siderúrgica Nacional, White & Case, and Vale.

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Streamlining Compliance

Utilizing Technology to Create a Consistent Compliance and Ethics Program in Latin America

Interview with Luis Kolster of Walmart International

Interview by
Greta Baranowski



As Vice President and Chief Ethics and Compliance Officer for Latin America, Africa, and the U.K. for Walmart International, Luis Kolster is no stranger to the challenges of running a global ethics and compliance program. In this interview, he discusses the ways in which technology has impacted Walmart's program in Latin America.

Can you give me an overview of how you use technology in Walmart's ethics and compliance program?

Walmart employs 2.3 million associates, operating in more than 11,600 stores in 28 countries. With a reach that broad, implementing an effective and efficient ethics and compliance program without the use of technology and automation would be challenging. We use technology in many of the key elements of the program. In some of our International markets, for example, we train associates in key operational processes involving Health & Safety by using QR codes located next to the machine or equipment they are going to use, so they can use their phones to download a short video that explains how to use that machine or equipment safely. We also conduct many compliance monitoring activities at store level in different areas like Food Safety and Environmental compliance using mobile devices. Our compliance monitors check how our compliance processes are executed, conduct training on the spot when needed, and create action items for those activities that require follow up. As we compile data from our markets and stores, we use technology to map the risks in different compliance areas in a way that allows us to analyze this information at a country level and at the individual store level, identifying trends that tell us where we need to focus our monitoring efforts. Finally, we have developed systems to support our TPI program, including selection, due diligence, training, and audit of our TPIs and systems to track, document, and control all the steps required to follow each of our licenses and permits through the application process.

How is your use of technology different in Latin America, as opposed to other regions?

One of the pillars of our ethics and compliance program is consistency. We take this into account from the very beginning whenever we decide to develop and implement a new system, so we evaluate different elements like bandwidth, languages spoken, local availability of the equipment required to run the system, and the change management process. If we did not take all these elements into consideration as we evaluate the feasibility of a new technology, we would not be able to achieve consistent implementation.

In the past few years, Walmart has made a significant investment in its ethics and compliance program and changed the structure of the program. How has this affected Latin America? What role has technology played in this restructuring and rethinking?

A few years ago, we started a significant effort to enhance our ethics and compliance program. One of the first actions that we took was to restructure the program under a single global group. With this evolution, we had to create common platforms to run the program for our international markets. Technology played a key role in allowing us to collect, analyze, and store information. As we continued to enhance our program, we developed and implemented systems that support our own centralized processes and controls and help us become more efficient and effective.

What benefits or changes have you seen in Latin America as a result of adopting greater technology in ethics and compliance?

We design policies, processes, and procedures for compliance areas like Health & Safety, Environmental, and Food Safety, but the actual execution takes place in the stores and distribution centers. Technology has helped us break a barrier between the office and the store, by embedding some of our compliance procedures into the operational processes that our store-level associates need to execute, and helps us monitor the level of compliance. When it comes to checking the temperature of food, for example, we could either fill out manual logs every few hours to check that the temperature is consistent, or we

As the company continues to use technology to create better ways to serve our customers, like online grocery pickup, or payment through the Walmart App, the ethics and compliance team must be able to move at the same speed and with the same agility.

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could use a device that will not only take it, but also record it and transmit it to a central system, creating automatic temperature logs.

Technology can provide great benefits to a compliance program, but it is not always perfect. Has adopting new technology into your compliance and ethics program created any new challenges for you?

In most of our international markets, we serve customers across a range of geographic areas, from big cities to rural areas. Some of the challenges we face relate to bandwidth in some of our most remote stores. When we need to train our store associates in the essential principles included in our Statement of Ethics, we cannot use the computer-based learning that we use for the associates in the office because there is not bandwidth to run the training module in the only computer that is available in that small store. We have to find other ways to provide training to these associates.

As you look ahead, what trends or potential developments do you see in the use of technology in Latin American compliance and ethics?

As the company continues to use technology to create better ways to serve our customers, like online grocery pickup, or payment through the Walmart App, the ethics and compliance team must be able to move at the same speed and with the same agility. Through our compliance monitoring capabilities we are developing ways to identify potential issues before they actually materialize. Our goal is to be able to do this accurately, and partner with the business to address those issues.

Thanks so much for sharing your insight!



Luis Kolster

Luis Kolster is the Chief Ethics & Compliance Officer for Latin America, U.K., and Africa for Walmart International. He leads the implementation and execution of Walmart's Ethics & Compliance program, including Anti-Corruption, Ethics, and other Compliance subject matter areas, in 22 countries.

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Momentum for Change against Corruption?

A Conversation with Luis Radulov of ABB

Interview by
Tyler Lawrence



Luis Radulov, General Counsel & Integrity Officer for ABB's operations in South America, knows better than anybody the unique challenges facing companies committed to anti-corruption work in Latin America. He joined ABB months after the Car Wash investigations began, and has helped guide the company's response to the changing conversation around corruption in the region.

TL: Latin America has been at the center of several major anti-corruption stories in recent years, most notably Operation Car Wash in Brazil. Has this new focus on anti-corruption changed how ABB, or anti-corruption work in general in the region, approaches the issue? Are companies taking it more seriously?

LR: Since I joined ABB, I've been really impressed by the quality of the program. It's really a global program. The culture and the messages are really consistent across jurisdictions. I was surprised to see where ABB was when I joined four years ago.

I don't see anything really changing in general for the whole program or even more locally, but we did create some additional steps to make sure that our processes were being fully observed.

I arrived in 2014 a couple of months after the Car Wash investigation started. We supply to companies that have either the government or state-owned companies as clients. Some of them were involved in the scandal, and some are still really important clients. These companies usually put products and services in a package and sell it to the government.

What we decided to do, in conjunction with our outside counsel in the US, is to put together a process: depending on the size of the project, we prepare this questionnaire for some of the projects which we believe are high risk. Basically, if you have the government as the end customer and we are not supplying them directly—that is, we're not part of the bidding process—the deal would go through this process.

I've been doing compliance and integrity work for more than 20 years now, and I've never seen something like it. Corruption is out there, and people are discussing it. It's being discussed over coffee, at dinner tables, in schools...it's out there, on the news all the time, every day for four years straight.

We started doing this in 2015. It was something that we thought was important to do. We didn't have to review many deals. But that gave us some comfort because of the investigations and the markets that we were supplying. It's time consuming, but we think it's important.

The other thing that I think is interesting to mention is that we used the momentum from the investigations to build up our culture. Everybody is talking about it here. I've been doing compliance and integrity work for more than 20 years now, and I've never seen something like it. Corruption is out there, and people are discussing it. It's being discussed over coffee, at dinner tables, in schools...it's out there, on the news all the time, every day for four years straight. And that's not just Brazil, it's Colombia, Argentina, Peru, many of the countries in Central America. It spread through the region. It's affected many governments, and countries that didn't have them are creating new laws.

Since 2014, we've been trying to use the momentum. People are seeing what's happening, how bad it is in some countries. We are trying to show them that corruption is more than just a problem in the world. If employees are really on board with our work, they're making a contribution to improve lives in their communities.

TL: So you're saying that the news stories and corruption investigations have sparked a cultural moment that you've been able to take advantage of. People are talking about corruption and are more aware of it. Has it given your ethics and compliance program more heft?

LR: Are companies taking it more seriously? Definitely, definitely. It's not there yet, it's not like it is in the US, for example. But companies are starting to understand that if they don't have a robust integrity program they'll lose business.

For the legal market in Brazil, everybody now wants to be a compliance specialist. Compliance programs are popping up everywhere; people are starting to get certifications. Companies are starting to build a program if they didn't have one.

Companies had an integrity or compliance code, but it wasn't being used. Now, things are changing.

TL: ABB is a global company with operations all over the world. How much do you collaborate with colleagues in other markets?

LR: We talk often. We have a centralized head, and we have monthly calls with all of the country officers where we can bring issues that we're having. It's constant. Anything difficult is escalated centrally.

I usually call the integrity officer in the US. He knows the company and has been handling these issues for a long time. So we talk all the time. We are always in touch with headquarters and within the Americas.

TL: So based on those conversations, do you think there are aspects of anti-corruption work or third party risk that are particularly challenging in Latin America compared to other markets?

LR: Because Latin America is less mature in terms of compliance programs, many times, we have partners that are less structured than ABB or other multinationals. The culture also isn't here yet. "I'm just helping the guy, so later he'll help me," that sort of thing. It's a big change, and it takes a while for that to happen.

Our profession is more risky here. It's not that the company doesn't do it all over the world. But here, for example, we selected a group of companies that we screen every year as a requirement for them being on our list of suppliers. It's basically an assessment where the third party provides information, and we look and see if according to the criteria that we've created they should qualify as a supplier for ABB in Brazil. And compliance is in the center of such assessment.

TL: What factors does ABB look at to identify which third parties may be higher risk to deal with than others? What factors would make a third party unsuitable to do business with?

LR: For the criteria, companies that interact with government agencies or entities would have to be screened. With our supply chain managers, we created this program to vet 300 suppliers. Any third party that would qualify with those specific criteria will be flagged and they will have to go through the process I described earlier.



Luis Fernando Radulov Queiroz

Luis Fernando Radulov Queiroz is the General Counsel and Integrity Officer for ABB in South America since 2014. Before joining ABB, Luis served in the board of directors of AES Eletropaulo, while he was also AES Brazil's head of litigation.

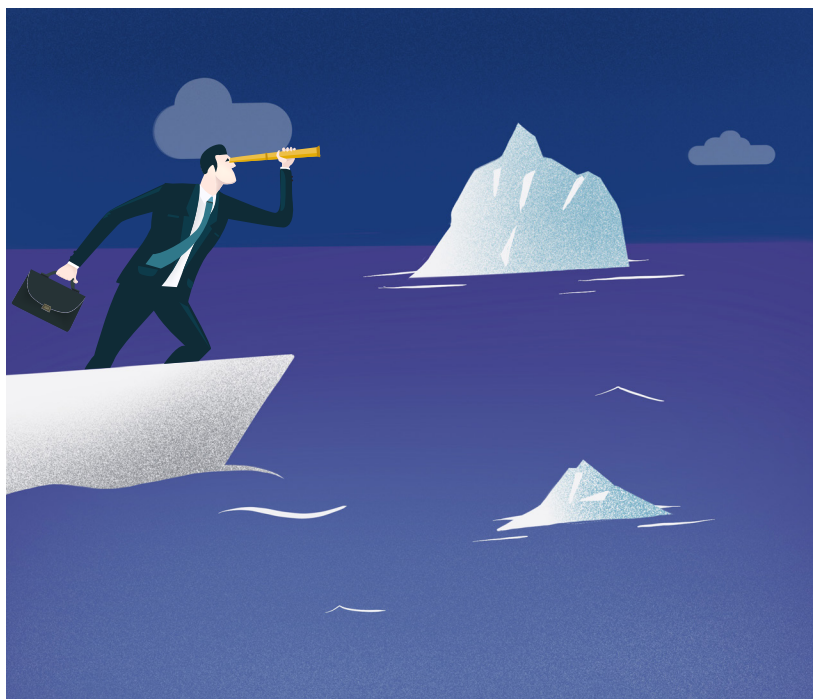
Previously, he held the positions of General Counsel and Compliance Officer of GE Capital and BenQ-Siemens in Brazil.

7

Navigating Code of Conduct Conflicts

Written by

Gary Zaugg of Ingersoll Rand



At Ingersoll Rand, we work with hundreds of third parties in Latin America, each with its own culture and policies. When we supply other companies, they frequently ask us to accept their codes of conduct, either through contractual clauses or other certifications. Assuming that what they really want is our sincere commitment to act legally and ethically—that is, to abide by our own code in our business with them—is it desirable or even possible for us to adopt, implement, or enforce multiple codes across our multinational organization? And if not, is it consistent with our values to affirm that we will do so just to get the contract signed or the deal done? Imposing your code on another company might sound like a great idea, but it can lead to problems. Despite their similarities, contemporary employee codes tend to express nuanced visions of institutional identity and include unique aspirational and policy provisions, not just general compliance do's and don'ts. I suggest that a spirit of reciprocity enhances compliance cooperation more than a take-it-or-leave-it approach to one party's employee code of conduct.

My Way or the Highway?

Conflicts arise when one party insists that its employee code become the supreme compliance constitution for all its business partners. Even if the parties have nearly identical core compliance policies, their comprehensive employee codes will probably never fully align. For example, if we're seeking to supply climate-control equipment to a financial institution in South America, their employee code may emphasize detailed data privacy policies that are appropriate for their operations but exceed legal requirements and industry standards for a manufacturing company. We could not, in good faith, agree to retool our own robust data-privacy program to match the particular variations of every other company.

In my experience, some companies can be a bit inflexible when it comes to their codes. They may even view our reluctance to adopt their codes—in favor of our commitment to abide by our own—as a red flag or an indication that we lack a compliance culture. For me, it is just the opposite. They should view our caution as an invitation to transparency and reciprocity in our business relationship. Rather than blindly agreeing to follow a code of conduct that I may not have read, I want to have

Rather than blindly agreeing to follow a code of conduct that I may not have read, I want to have a discussion about how each company strives for high ethical standards.

a discussion about how each company strives for high ethical standards. We may enforce slightly different policies, but they almost always share the same goals for ethics and compliance.

The Rules of the Road

Why this emphasis on implementing another company's code? In Latin America, I believe it's because of the changing enforcement climate. With new laws and standards in Mexico, Brazil, Argentina, Peru, and other countries, there is a growing expectation (and sometimes a clear requirement) that companies must have a compliance program. Perhaps because of the growing emphasis on robust compliance, many companies believe that they must require their third parties to follow their employee codes, as well.

However, this is not actually true. For example, in the FCPA resource guide published by the DOJ and the SEC, the expectation is reciprocity: "DOJ and SEC also assess whether the company has informed third parties of the company's compliance program and commitment to ethical and lawful and . . . has sought assurances . . . of reciprocal commitments." The new ISO 37001 standard takes a similar approach. In other words, my company has a code, your company has a code, and we both agree that we will follow our codes and do business legally and ethically. As an alternative to a reciprocity clause, some companies create a slimmed-down version of their

Perhaps because of the growing emphasis on robust compliance, many companies believe that they must require their third parties to follow their employee codes, as well.

code, focusing on the key compliance provisions that should be at the foundation of any compliance program. These codes of conduct for suppliers or other business partners could be accepted by third parties without creating a conflict with their enforcement of their own codes.

Without either a reciprocity clause or a basic code of conduct for business partners, there may be real differences between

The key is working collaboratively with the third party to hammer out a solution.

two companies' general employee codes. In Latin America, labor and environmental laws can vary from country to country. A company headquartered in a location with more lenient laws may not always meet the standards that Ingersoll Rand expects of its business partners. In these cases, the key is working collaboratively with the third party to hammer out a solution, which is then clearly defined in the contract. I don't expect the other company to just blindly sign off on our code without reading it. I want to make sure that they will truly follow the substance of our standards for doing business.

Removing Roadblocks

As I've mentioned, the battle of the codes can be resolved by either a reciprocity clause or agreement on a basic code for business partners, not employees. But in the long term, there may be a better solution. Perhaps it's time for an outside organization—such as Ethisphere, the Organisation for Economic Co-operation and Development (OECD), Transparency International, or the International Organization for Standardization (ISO)—to establish set of common principles for ethics, compliance, and social responsibility that all companies can certify to—a sort of treaty. That way, we all know that we're agreeing to abide by the exact same standards. For regions like Latin America, where laws and expectations can vary from country to country, this would help create a more level playing field.

In a way, conflicts between codes of conduct are not a bad problem to have. If anything, they show that more companies are committed to upholding the standards of ethics and compliance laid out in their codes of conduct, and they only want to work with third parties who can do the same. However, it's time to acknowledge that sometimes it isn't always realistic to expect this from third parties that have their own codes. Instead of insisting that it's my way or the highway, we should all work together to make the road to ethical conduct a little smoother.



Gary Zaugg

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