Compliance in South America: Challenges and Effective Strategies

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APPENDIX

South America Legislative Update

South America: Legislative Update

Important updates in South America :

- **Peru:** *Ley de Responsabilidad de Personas Jurídicas por Corrupción* (Law n. 30,424/2016), effective from July 1st, 2017

- **Colombia:** *Ley contra la Corrupción Trasnacional* (Law n. 11,778/2016):

- The two legislations comprise:
  - **incentives to the adoption of internal compliance programs** (in Colombia it is mandatory for the health sector according to new legislation)**;**
  - **incentives to self reporting and cooperation** (mitigating factors in case of prosecution);
  - **corporate liability** (criminal and/or administrative spheres)

- **Argentina**: The Anticorruption Office (federal body linked to the Ministry of Justice) has submitted a bill on anticorruption to the Congress that comprises all the aspects above

ARGENTINA

- **High profile cases**
- Hotesur case: The argentine ex-President, Ms. Cristina Fernández de Kirchner and her sons are the main shareholders of Hotesur S.A. ("Hotesur"). The First Instance Federal Criminal of Buenos Aires is currently investigating if: (i) the purpose of certain operations was to legalize the payment of bribes in exchange for awarding public tenders to companies related to Mr. Lázaro Baéz (ex-Public Works Secretary); and if (ii) the ex-President entered into a conflict of interest by renting the Hotel's rooms to a state owned company, such as Aerolíneas.
- Los Sauces case: Ms. Cristina Fernández de Kirchner is the main shareholder of Los Sauces S.A. ("Los Sauces"), owner of real estate in Argentina. The Federal Justice investigates, among other allegations: (ii) if the ex-President received bribes in exchange for awarding public tenders to companies related to Mr. Lázaro Baéz and (iii) if the ex-President received bribes from Mr. Cristóbal López in return of several authorizations granted to operate casinos in Argentina.
- The Ciccone Calcográfica case: Ciccone is a printing company. In March 2012 it secured a contract with the Argentine Central Bank to print 500 million bank notes for an estimated amount of AR$ 255 million. The prosecutor is trying to prove that Mr. Amado Boudou (ex-Vice President) abused his position and -intervened in negotiations forbidden to a public officer with the objective of obtaining benefits for himself or for related third parties. On June 22, 2016, Federal Justice ruled that that the ex-Vice President must go to trial.

Legislative update: *The Argentine Anti-Corruption Office drafted a law proposal providing criminal liability for legal entities regarding corruption crimes against public administration and foreign bribery. It also brings provisions on: bribery of foreign officials; compliance programs; whistleblowing; credits for self-disclosure and cooperation.*

Prepared with the colaboration of: ALLENDE & BREA

ARGENTINA

Provisions on bribery of foreign officials	No
Bribery of local officials	Yes
Corporate liability	No
Type of Liability	Criminal - individuals
Facilitation Payments	No provisions
Penalties / Fines / Other Sanctions	Imprisonment and prohibition to occupy any public position
Credit for existence of compliance programs	No
Credit for self-disclosure and cooperation	No
Whistleblowing mechanisms	No
Gifts & Hospitality	It is considered a bribe

** A bill submitted to the National Congress by the Argentine Anticorruption Office might bring important changes to this chart in case it is approved*

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Peru

High profile cases:

Mr. Alex Kouri's case: On July, 2016, Mr. Alex Kouri, former Mayor of Callao (town bordering the city of Lima), was declared guilty for the commission of collusion crime. It was determined by the judiciary that Mr. Alex Kouri illegally favored a company named Convial during the building of an expressway for a total amount of US$32 million. Penalties: 5 years of imprisonment and the payment of S/ 26 million (US$8 million) for damages.

Lava Jato case: Ongoing investigation being conducted by a Congressional commission which is searching for potential bribe payments to Peruvian Officials by a number of Brazilians companies in order to secure the develop of infrastructure projects. Former Peruvian presidents such as Mr. Alan Garcia and Mr. Alejandro Toledo and even the recently elected president Mr. Kuczynski are allegedly involved.

Gaseoducto Sur Peruano Case: A US$ 4.400 million infrastructure project and the biggest of its class in Peru. It is of public knowledge that there is currently a criminal anticorruption investigation ongoing against the representatives of the Consortium that won the public bid due to alleged irregularities during the awarding proceeding. It is said that certain former member of Proinversion (Peruvian Government Agency that ran the public bid) gave an undue advantage to the Consortium **--**comprised of an indirect subsidiary of Odebrecht and Enagas Internacional S.L.U.-- based on his prior professional relationship with Odebrecht and its subsidiaries.

Legislative update: *Law No. 30424 that establishes the "Administrative Liability of Legal Entities for the Commission of Active Transnational Bribery" that will become effective on July 1, 2017.*

Prepared with the colaboration of:

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Peru

Provisions on bribery of foreign officials	No (there will be from July 1, 2017)
Bribery of local officials	Yes
Corporate liability	No (there will be from July 1, 2017 for bribery of foreign officials)
Type of Liability	Criminal – individuals Administrative – legal entities (from July 1, 2017 for bribery of foreign officials)
Facilitation Payments	No specific provision. Treated as bribery if it influences an official decision
Penalties / Fines / Other Sanctions	Individuals: 3 to 15 years in prison Legal entities (from July 1, 2017 for bribery of foreign officials): A fine of up to six times the benefit obtained, or expected to be obtained; suspension/prohibition of activities; debarment from public bids; dissolution of the entity
Credit for existence of compliance programs	Yes – Exemption from liability if, prior to the commission of the crime, said organization has a program in place (from July 1, 2017 for bribery of foreign officials)
Credit for self-disclosure and cooperation	Yes – element for mitigation of penalties (from July 1, 2017 for bribery of foreign officials)
Whistleblowing mechanisms	Only for the public sector
Gifts & Hospitality	Treated as bribery if it influences an official decision

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Colombia

High profile cases:

Pretelt Case. In 2015 Jorge Pretelt, a magistrate of the Constitutional Court was accused for certain corruption actions involving favoring a fiduciary entitiy (financial service), FIDUPETROL, in connection with the decision of certain constitutional protective action (*tutela*) Allegedly, Pretelt requested 500 million pesos to the attorney of Fidupetrol and in consideration for the payment; Pretelt would give a favorable decision for the interest of Fidupretol in the case against this company.

The congress of the Colombian Republic, after an investigation of the facts, decided to accuse the Magistrate. Notwithstanding, Pretelt refuses to abandon his position in the Constitutional Court.

Legislative update:

SARLAFT (Healthcare sector of the economy): the governments established that some companies in this sector are obligated to implement an anti-money laundering and financing terrorism program

Law 1778 of 2016. This law establishes fines up to 200.000 monthly legal minimum salaries ($46 million USD approx.) to companies in which his employees, managers, or associates do bribery practices in relation with national and foreign public officers. Additionally, the Law stipulates that Superintendence of Companies has the obligation to issues regulations further detailing the cross border anti bribery guide (this guide is not implement yet)

Prepared with the colaboration of: POSSE HERRERA RUIZ ATTORNEYS

Colombia

Bribery of foreign officials	Yes
Bribery of local officials	Yes
Corporate liability	Yes
Type of Liability	Criminal – individuals Administrative – legal entities
Facilitation Payments	No specific provision. Treated as bribery if it influences an official decision
Penalties / Fines / Other Sanctions	Individuals: Criminal, financial and disciplinary sanctions. Prohibition to occupy public positions. Legal entities: fines up to 200.000 monthly legal minimum salaries ($46 million USD approx.) to companies in which his employees, managers, or associates do bribery practices in relation with national and foreign public officers.
Credit for existence of compliance programs	Yes. Mitigating factor. Mandatory for some sectors as determined by the Superintendence of Companies
Credit for self-disclosure and cooperation	Yes. It can lead to total exemption of the penalty
Whistleblowing mechanisms	Only for the public sector
Gifts & Hospitality	Public officers prohibited to accept or request gifts and hospitalities.

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