

## Major Recent Developments in Anti-Corruption Compliance Across Latin America

**UTILITIES & ENERGY** COMPLIANCE & ETHICS CONFERENCE  
FEBRUARY 10-12, 2019 | HOUSTON, TX



Brian Weihs, Managing Director, Kroll Mexico

February 11, 2019

*Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice*

### Agenda



- **New Laws** - laws enacted in countries across the region give new powers to enforcers and require new obligations of companies – how has this changed the ABC (anti-bribery and corruption) compliance picture in the region?
- **Prosecutions** - enforcers are exercising new-found powers and autonomy, and working in closer collaboration with foreign authorities, resulting in several notable (game-changing?) prosecutions. Are there more coming?
- **Political Developments** - anti-corruption has been a significant and sometimes overwhelming issue in recent and upcoming elections across the region. How might the ABC compliance picture evolve in the next couple of years?
- **Cyber-related Issues** in anti-corruption compliance

*Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice*

## New Laws & Regulation – Recent trends

### Liability and defense

- Liability of corporations – both criminal and administrative
- Addressing foreign corruption (in other countries)
- Requirements or benefits for compliance programs
- Creation of new enforcement authorities
- Incentives to self-report (and report others)



Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll.** | A Division of  
**DUFF&PHELPS**

3

## New Laws & Regulation – Recent trends

### Liability and defense

Country	New Law	Criminal?	Administrative?	Compliance Defense/Mitigation/Aggravation
Argentina	2018	✓	✓	✓
Brazil	2013*		✓	✓
Chile	2018	✓	✓	✓
Colombia	2016		✓	✓
Mexico	2016	✓	✓	✓
Panama			✓	✓
Peru	2018	*	✓	✓
Uruguay				

New legislation tends to expand liability of corporations

...and include Compliance as a defense or mitigating factor in prosecution/sentencing

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll.** | A Division of  
**DUFF&PHELPS**

4

## New Laws & Regulation – Recent trends

### Enhancing prosecution

- New or reinvigorated agencies
- Experimenting with international agencies
- Incentives for self-reporting (and reporting of others)
- Whistleblower protection and incentives
- Permitting precautionary incarceration

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

## New Laws & Regulation – Recent trends

### Enhancing prosecution

- New or reinvigorated agencies
- Experimenting with international agencies
- Incentives for self-reporting (and reporting of others)
- Extending requirements to subnational states/provinces
- Permitting precautionary incarceration

### Other trends

- Involvement of civil society – drafting and oversight
- Extending requirements to subnational states/provinces



Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

## New Laws & Regulation – What's missing?

- Are prosecutors and judges sufficiently autonomous?
- Conflicting regulation – among subnational jurisdictions, agencies, and among countries
- Adequate communication mechanisms

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll.** | A Division of  
**DUFF & PHELPS**

7

## Prosecutions - Lava Jato (“Car Wash”) in Numbers..

2.476 judicial proceeding installed

236 arrest warranties

More than 300 people charged

211 convictions against 139 people

Active cooperation request with 45 countries

Approximately US\$ 6 billion of bribes paid



Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

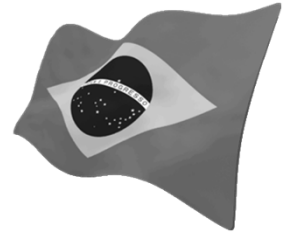
**Kroll.** | A Division of  
**DUFF & PHELPS**

8

## Prosecutions - More Operation Car Wash



- Charges include corruption, money laundering, drug trafficking etc.
- Former President Luiz Inácio Lula da Silva was convicted for corruption and money laundering charges and in April 2018, he was ordered to turn himself in and began serving his 12-year prison sentence.



Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll** | A Division of DUFF & PHELPS

9

## Prosecutions - Argentina

- Investigation into President Mauricio Macri:
  - Money laundering and conflict of interest investigations related to Mr. Macri's family extensive business holdings.



- Investigation into Former President Cristina Kirchner:
  - Indictments since leaving office includes charges of money laundering and corruption;
  - Former vice-president Amado Boudou and former planning minister arrested for illicit enrichment.

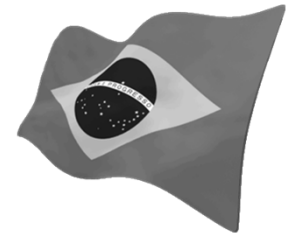


Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll** | A Division of DUFF & PHELPS

10

## Prosecutions - Operation Zelotes



- Multi-year investigation into Brazil's Administrative Board of Tax Appeals;
- Tax evasion scheme of nearly BRL 19 billion;
- Government officials being investigation for misappropriating public funds;
- Over 22 public servants involved.

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll** | A Division of DUFF & PHELPS

11

## Prosecutions - Colombia



Fonade Scandal (2018):

- Corruption network in Colombia's Financial Development Fund;
- Irregularities in the bidding process for a Housing Program that benefitted a senator and house representative. 6 people admitted the wrongdoing.

Reficar Oil Refinery (2017):

- American Engineering firm Chicago, Bridge & Iron Company ("CB&I") executive charged with corruption in connection with Colombian oil refinery Reficar, a state owned company. Reficar directed contracts to CB&I without following public bidding requirements and there were irregularities in several payments made to CB&I.

Luis Gustavo Moreno (2017) -

- Former anti-corruption chief charged and arrested for receiving bribes in return to intervening with investigations into a former governor. After his arrest, he collaborated with authorities to shed a light in massive corruption scandals in the judicial and congressional branch

Former President Uribe resigns from Senate after Supreme Court disclosed that there was widening a criminal investigation on him that included accusations of bribery (2018)

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll** | A Division of DUFF & PHELPS

12

## Prosecutions – Mexico behind the others?



- Pemex :
  - 8 administrative proceedings in connection with contract irregularities involving Odebrecht;
  - Pemex history of corruption allegations;
  - Former senior executive stated that corruption is imbedded in the company's culture.
- Alejandro Gutierrez (Former Deputy Mr. Pena Nieto):
  - Illegal use of public money to fuel his party's campaigns in Mexican elections in 2016;
  - Favorable contract to President Mr. Pena Nieto's wife;
  - 300 public servants from at least 41 government agencies are currently under investigation for corruption.

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll.** | A Division of  
**DUFF & PHELPS**

13

## Prosecutions – Trends to watch

- Incentivization of whistleblowers and credits for self-reporting (first to report);
- Aggressive use of powers to incarcerate
- Use of laws other than anti-corruption (money laundering, organized crime)
- Growing cross-border collaboration in investigations;

▪ Foreign jurisdictions are expanding their **enforcement capabilities and laws/regulations.**

Will likely result in **voluntary disclosures**, based on joint efforts and evidence of misconduct being collected.

Potential for US **sharing information** with foreign partners to conduct additional investigations/prosecutions.

Companies are being forced to view **compliance requirements** from a **global perspective.**



Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

**Kroll.** | A Division of  
**DUFF & PHELPS**

14

## Political Developments



*Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice*

**Kroll.** | A Division of  
**DUFF & PHELPS**

15

## Political Developments



- The majority of the people in Latin American believe the corruption has increased in their country.
- After the Police, Elected representatives and government are the most corrupt institution in society.
- Society is becoming more outspoken against corruption.

*Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice*

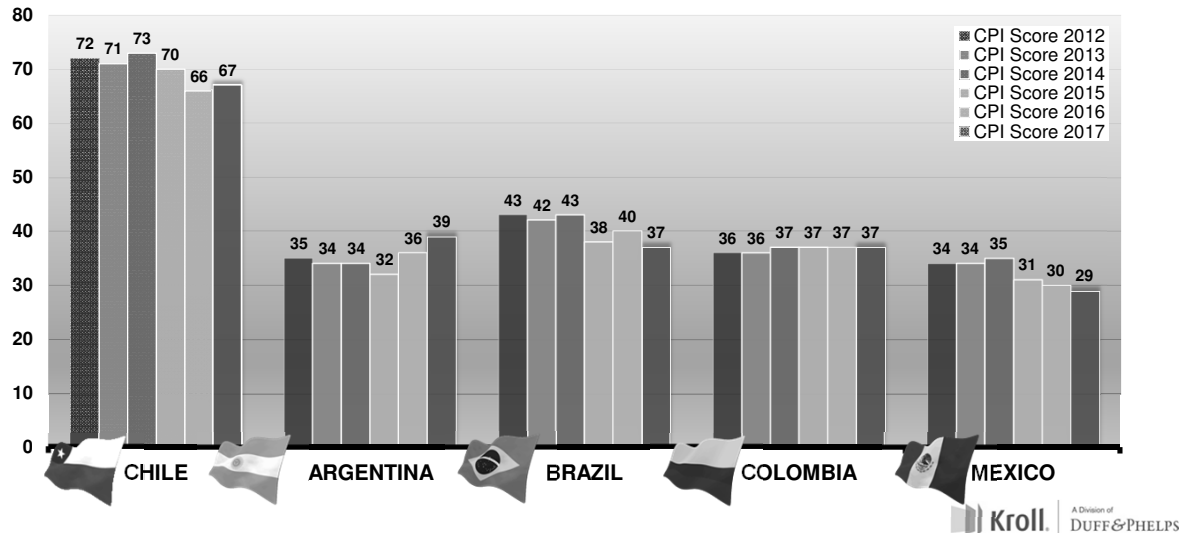
**Kroll.** | A Division of  
**DUFF & PHELPS**

16



## Political Developments – not much improvement

### Corruption Perceptions Index (Transparency International)



17

## Political Developments (What's Next?) - Mexico



President Andrés Manuel López Obrador:

“ We wont act in an arbitrary way and there will be no confiscation or expropriation of property. The transformation will consist basically of banishing corruption from our country”

- Support from legislators from Senate and Chamber of Deputies
- Open to international organization assistance
- Open to creating of a specific government body to help local prosecutors to build graft cases

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

Kroll. A Division of DUFF & PHELPS

18

## Political Developments (What's Next?) - Brazil



Jair Bolsonaro, President of Brazil:

"We will reduce corruption as much as possible. We know the difficulty of this, but we will reduce the size of the State. At most, 15 ministries. Of the 250 state companies, in the first year [of government], at least 50 or we simply privatize or extinguish. Only in this way will we combat corruption "

- Push for the approval of original text of the Ten Measures Against Corruption
- "Transparency is non-negotiable"
- Reduce the complexity of the State bureaucracy

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice



19

## Political Developments (What's Next?) - Colombia



Ivan Duque, President of Colombia:

"What we most want is for Colombia united to completely smash corruption across all the territories. We are going to return to our population the hope and ability to believe in our institutions. We will be the government that like never before in our country will confront this cancer."

- Controls on companies doing business with the government
- Restrictions on Lobbying
- Increase transparency

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice



20

## Continuing risk factors in Latin America

- **Decentralized and overlapping authorities** - companies are required to seek a number of approvals from several different government agencies (federal, state and local) to sign off on a license. The more government actors who are involved in a regulatory process, the more places exist where bribe requests payments can occur. The procedures are time-consuming, bureaucratic, complicated and expensive;
- **Politicized agencies** – government agencies are often filled with political appointments, seen as short-term opportunities to become wealthy, and with multiple levels of sponsors to be benefitted.
- **Dependence on third parties**
  - Complex nature of regulatory regimes force companies to seek a third party's expertise;
  - In some cases, legal systems require the use of third party
  - Interpersonal relationships are sometimes essential to the business: opens the door to viable sales channels in a country.
  - There are some red flags that are not intuitive for U.S. compliance practitioners.
- **Opaque ownership structures**



Kroll. A Division of DUFF & PHELPS

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

21

## Continuing risk factors in Latin America

- **Public Procurement:** Throughout Latin America, except for very few specific situations, governments can only purchase goods and contract services through public biddings designed to ensure equal conditions for all bidders. Such procedures usually have strict and formal rules.
- **Regulatory Systems:** Latin American regulatory regimes are often found to be vague, overlapping, or enforced by multiple government agencies. Ambiguity and complexity create the potential for authorities to use discretion in decision making, creating greater opportunity for manipulation which can form the basis for corrupt acts.
- **Customs Clearance:** Understaffed ports lead to paperwork and decision bottlenecks, creating incentives for some companies to provide favors to officials to skip lines, particularly where perishable goods or urgent shipments are involved. Customs brokers with expertise in specific procedures can be valuable resources, but they also can create risk of indirect bribes.
- **Gifts, Hospitality And Entertainment:** Gifts and entertainment are an important (some believe indispensable) part of business culture



Kroll. A Division of DUFF & PHELPS

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice

22

## Continuing risk factors in Latin America

- **Family Owned Businesses:** Some 85% of the companies in Latin America are family-owned, generating approximately 60% of Latin America's GDP
- Homegrown companies often lack common accounting standards, corporate governance transparency or basic internal controls
- Family owned businesses often have close connections to politicians – they find success through successfully manoeuvring political waters, through close connections to powerful politicians, and often their success is translated into political careers.

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice



23

## Developments in Anti-Corruption Compliance in Latin America

### Where Cyber Falls in These Developments

**“It takes many good deeds to build a good reputation, and only one bad one to lose it.”**

**– Benjamin Franklin**

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice



24

## Major Recent Developments in Anti-Corruption Compliance Across Latin America

### Cyber Trends

- Business Email
- Ransomware with wiping capabilities
- Supply chain attacks
- Cryptocurrency mining

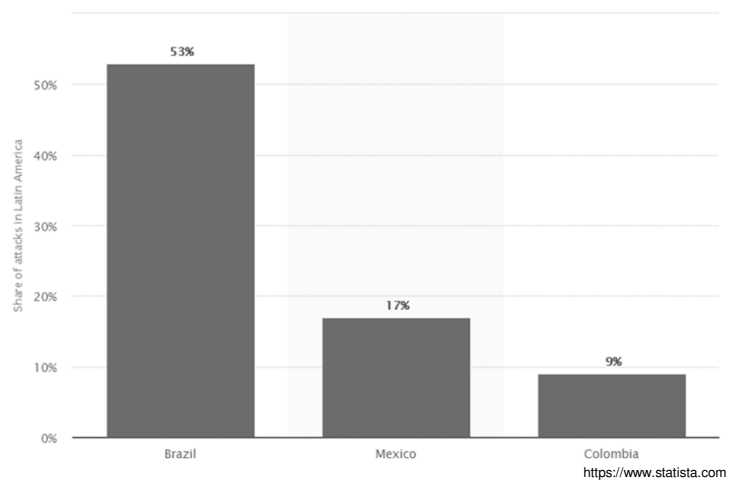
*Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice*



25

## Major Recent Developments in Anti-Corruption Compliance Across Latin America

### Countries in Latin America most targeted by cyber attacks in 2017



*Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice*

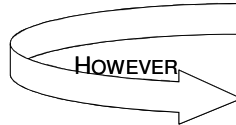


26

## Major Recent Developments in Anti-Corruption Compliance Across Latin America

### Contributing Factors to Latin America as Targets

- Few Coordinated Defense Mechanisms
- Public Awareness is Low
- Disconnect between public and private industries



- Growing Population Increasingly Connected to Internet
- Regional Increase in Laws Promoting Institutional Stability, Transparency & Accountability
- Access to Internet/Social Media → Demand for Institutions be Proactive in Public-Private Regulation

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice



A Division of  
**DUFF & PHELPS**

27

## Major Recent Developments in Anti-Corruption Compliance Across Latin America

### How do you protect your LATAM Business Operations

- Understand Threats to Business & Partnerships
- Only Provide/Share Necessary Information with Partners
- Assess Business & Partners Security Posture
- Monitor Relationship & Behaviors

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice



A Division of  
**DUFF & PHELPS**

28



A Division of  
**DUFF & PHELPS**

**Kroll.com**

Brian Weihs  
Managing Director & Head of Mexico Office  
Kroll, a division of Duff & Phelps

Brian.Weihs@duffandphelps.com

Stacy Scott  
Managing Director  
Cyber Risk

Stacy.Scott@duffandphelps.com

Proprietary and Confidential. These slides have been prepared for general information purposes only and do not constitute legal or other professional advice



A Division of  
**DUFF & PHELPS**

29