

ADVISING ON COMPLIANCE REQUIRES MULTIDISCIPLINARY LEGAL TEAMS

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US anticorruption investigators can “come across as aggressive”

Eduardo Rovira, partner with Uría Menéndez in Madrid, believes that “the drive for more compliance is a global trend”. He adds: “Most countries will end up there – the way to solve it is to create an internal code of conduct and to enforce it and to teach it. At law firms we have to have our own code of conduct, how lawyers need to react and how things need to be done. We learn by doing it ourselves. ”

Carolyn Knox, of counsel in Ogletree Deakins’ international practice group, said that US companies have a sense of unease when “evaluating transactions or dealing with issues that arise in countries with legal systems different from the US and where the fundamentals for most areas of law are very different”. She added: “For example, someone who comes from the US to do an investigation on anticorruption in Latin America comes across as aggressive when, in the common law tradition, being targeted, focused and direct is valued. They do not perceive themselves to be acting in a manner that might not assist them to reach their goals. The same challenges occur during due diligence or negotiations. There is a process to go through – we need to understand from our perspective how to evaluate deals and how people communicate in Latin America so we get a better comfort level.”



The economic conditions in some Latin American countries mean that it is vital that businesses have credible compliance programmes

Event: Iberian Lawyer: Managing investment in fragile economies – how has the compliance tsunami affected Latin America?

Location: Rio de Janeiro, Brazil

Law firms in Latin America need to create multidisciplinary teams in order to effectively advise clients on the issue of compliance, attendees at a recent Iberian Lawyer event in Rio de Janeiro heard. Participants were told that businesses operating in Latin America have a great need for effective compliance programmes, especially given

the economic climate in some countries in the region.

Citing the example of Brazil, one speaker highlighted the country's fragile economy - due to a perfect storm of bad economic policies, low commodity prices, high interest rates and low consumption - and consequently, it is important that companies have good and credible compliance programmes. "It is a tough environment for everyone in Brazil - with the high cost of capital, depressed economy and political turmoil - but there is comfort in the fact that democratic institutions (including the independent judiciary, police, press and Congress) are showing to be solid and credible," said Pedro Aguiar de Freitas, partner at Veirano Advogados. He added that sound compliance programmes are an essential requirement if companies want access to finance an equity investment, as well as do business with reputable partners. In addition, they are also vital for companies that want to stand up to scrutiny from regulators, consumers, communities and other stakeholders.

The onus is on law firms to meet the demand for compliance advice from clients, event participants heard. Aguiar de Freitas said: "We are busy doing compliance related investigative work - we have a team for investigations, beginning with the competition lawyers who have been doing this for a long time. He added that the team also includes corporate lawyers, criminal lawyers, tax and labour lawyers. "This work requires multidisciplinary teams and a good understanding of the business of the client and good interpersonal relationships, so as to avoid disrupting the business environment of the company," Aguiar de Freitas added.



Participants said need for law firms to have multidisciplinary compliance teams

The need for law firms to create multidisciplinary compliance teams is a widely-held view in many Latin American countries. "In Peru, there is a big discussion now regarding compliance - right now there is criminal liability for individuals engaged in corruption but now there's a bill which will be passed very soon creating criminal liabilities for companies," said Luis Carlos Rodrigo Prado, managing partner of Rodrigo Elias & Medrano. "You need to approach these matters in a very

comprehensive way, in our case the compliance practice is led by a criminal law partner and a corporate partner."

Juan Carlos Rocha, Bogota-based partner at Philippi Prietocarrizosa & Uriá, echoed the view that compliance teams need to be multidisciplinary. "In Colombia, compliance is slightly different - it is

primarily focused on anticorruption, and second on environmental law, while transparency in listed companies is another area of focus," he said. Rocha added: "While in Colombia we never produced our own set of regulations such as the Foreign Corrupt Practices Act, we are struggling with our clients and our legal environment to apply those regulations and principles from Europe and the USA – we need to 'tropicalise' compliance."

According to Daniel del Rio, senior partner at Basham, multinationals doing business in Mexico have their own compliance programmes well established "otherwise someone higher up will make them behave". However, he added that, it can be difficult to convince Mexican companies of the benefits of compliance programmes unless they are already in trouble.

