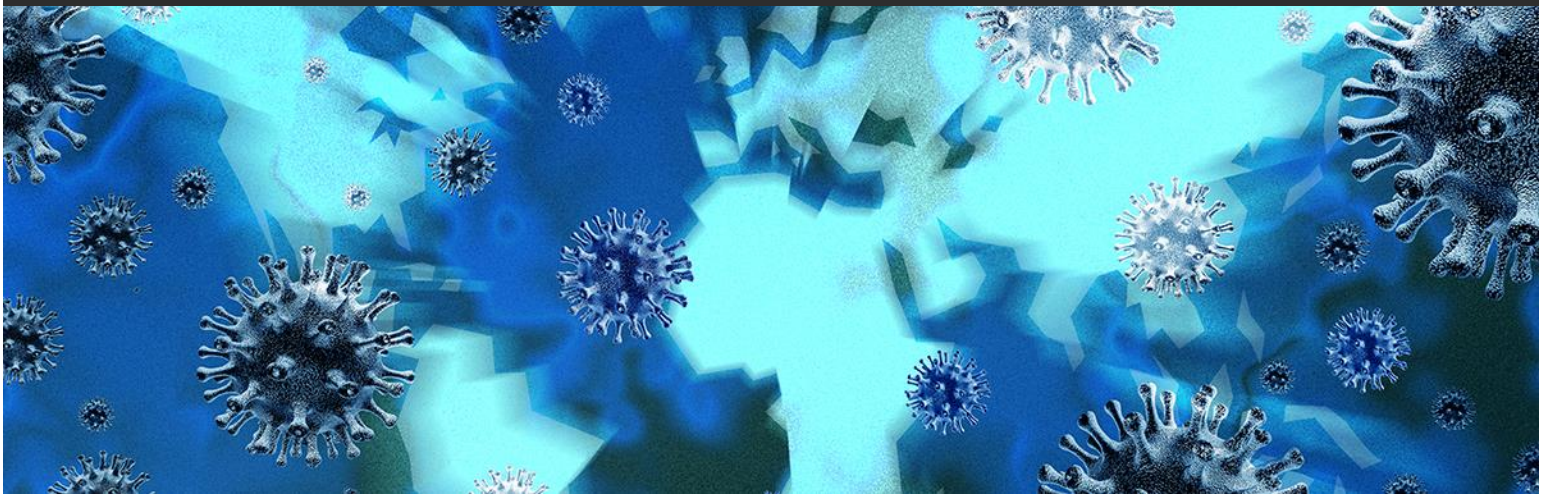


**Alert | Health Emergency Preparedness Task Force:  
Coronavirus Disease 2019**



June 2020

## **FCPA Risks in Latin America During the COVID-19 Pandemic**

Latin America (LATAM) has become the epicenter of the Coronavirus Disease 2019 (COVID-19) pandemic, and the needs of the region intensify the corruption risks that already exist. Companies operating in LATAM must comply with applicable anticorruption laws, which may include long-arm statutes such as the U.S. Foreign Corrupt Practices Act (FCPA) as well as local jurisdiction. The FCPA prohibits persons subject to U.S. jurisdiction from paying bribes to further their business interests. Corruption risk in LATAM is high when companies interact with government officials, especially in the following areas: government procurement, customs clearance, licensing and permitting, government inspections, and donations.

### **Latin America**

Hospitals in many regions are struggling to cope with the pandemic and are facing shortages in staff, beds, ventilators and other medical equipment and health supplies. Several governments throughout LATAM are performing emergency acquisitions and requests for services to respond to the COVID-19 emergency and to prevent their health systems from being overwhelmed. As a result, opaque contracts, overpricing, collusion, and embezzlement may occur. The former chairman of Transparency International, José Ugaz, indicated that “[w]henver there’s a dire situation, spending rules are relaxed and there’s always someone around looking to take advantage to make a profit.”

According to [Transparency International](#), 13 of their national chapters in LATAM recently raised alarm over serious corruption risks in the region's emergency response to the COVID-19 pandemic, specifically in public procurement processes.

The procurement of health-related products is historically one of the most vulnerable areas for corruption. In 2019, the Global Corruption Barometer for LATAM and the Caribbean (the Barometer) indicated that bribery rates in public clinics and hospitals was 10%. The Barometer also indicated that one in five citizens of LATAM and the Caribbean pays bribes.

## Mexico

Mexico is no stranger to corruption-related risks. According to the Barometer, 34% of public service users have paid a bribe in Mexico, regionally second only to Venezuela. In 2019, Transparency International's Corruption Perception Index ranked Mexico in position 130 of 183. The first-ranked country is perceived as the least corrupt.

On May 21, 2020, the Mexican National Institute of Statistics and Geography (INEGI) released the National Survey of Government Quality and Impact (ENCIG). Although the perception of the frequency of acts of corruption in government institutions decreased going from 91.1% in 2017 to 87% in 2019, the prevalence rate of corruption and the incidence rate of these acts increased in the same period. According to the ENCIG, acts of corruption per 100,000 inhabitants increased 19.2%, and the states with the highest prevalence are Durango, Mexico City, and the State of Mexico.

Finally, according to the ENCIG, in 2019 the total cost of corruption involving conducting payments, bureaucratic proceedings, and requests for public services and other type of contacts with the Mexican authorities was 12.8 billion pesos (US\$562 million). This indicates that the average amount spent in bribes per person in Mexico was 3,822 pesos (US\$175).

It is important to remember that Mexico has a legislative framework applicable to compliance issues, which includes a regulatory framework on anticorruption, money laundering, antitrust, personal data protection, and guidelines for lobbying activities.

The Mexican National Anticorruption System (SNA) became effective in 2015 and created a Federal Administrative Justice Court, a Specialized Anticorruption Prosecutor, and enhanced Federal Audit Department's power to supervise government expenditures.

The SNA created a list of administrative offenses to sanction government officers, individuals, and private entities including bribery, influence peddling, collusion in public procurements or improper hiring of former government officials. Further, the Federal Criminal Code was amended to include a chapter on criminal offenses related to corruption such as bribery, embezzlement, extortion, illicit enrichment, and intimidation, among others.

In addition, Mexico recently entered into the following international agreements that include important anticorruption chapters:

- The United States-Mexico-Canada Agreement (USMCA), that will enter into force July 1, 2020.
- The New Free Trade Agreement between the European Union and Mexico, expected to enter into force in 2020.

- The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), formerly known as Trans-Pacific Partnership (TPP), that entered into force for the first six countries, including Mexico, on Dec. 30, 2018.

### Possible Mitigation Measures

Given the prevalence of corruption in LATAM, including Mexico, and the overlay of the additional corruption risks due to COVID-19, companies should consider implementing or enhancing existing controls to prevent and detect possible corruption. The mitigation measures should reflect the limitations in the region during the pandemic. For example, although LATAM has seen growth in technology, it remains less developed than other areas of the world.

Underdevelopment makes it more difficult to manage third-party risk, particularly when there are technological limitations to completing the due diligence process on short notice. Third-party intermediaries that interact with government entities on behalf of a company are high risk as well. Companies may want to review third-party intermediary contracts to ensure that they are current, have a well-defined scope of work, and clear payment terms. Companies may also want to consider reducing the number of third-party intermediaries they retain. Concentrating the number of third-party intermediaries may reduce compliance failures and allow the company to focus on the highest risk third-party intermediaries.

Moreover, companies may struggle to maintain effective communication and meet training requirements during a crisis. Companies may consider strategies to reach areas where technology is not present, or is unreliable, and to ensure the message is effectively received. Frequent and succinct reminders to employees and third-party intermediaries about the company's expectations on anticorruption are important. These reminders should provide contact information for those with questions or concerns.

Monitoring, testing, and audits may also be impacted by weak technology resources. Assessing the company's technology capabilities within the region is vital to determining what changes a company should consider for its compliance program during the pandemic. If a company does not have a formal testing or monitoring program, it may wish to choose a high-risk transaction (e.g., sale of PPE to a public hospital) and then review it against the company's internal procedures (e.g., vendor setup, vendor invoicing requirements, etc.).

Technological limitations could affect document maintenance. Employees may be tempted to use personal devices over company-issued devices for work-related communications. This, in turn, may affect the company's ability to maintain current documentation as may be required by its anticorruption program. Companies may wish to address these limitations when assessing the different risks present during the pandemic and considering alternative procedures to ensure the risks are mitigated.

On a final note, companies need to ensure that they adhere to company policies and procedures, and document instances when they were unable to do so. Daniel Kahn (Senior Deputy Chief, Fraud Section, U.S. Department of Justice) alluded to this in comments at the American Conference Institute's Anti-Corruption Global Series: Virtual DOJ, SEC & FBI Town Hall on May 20, 2020. He acknowledged that given these extraordinary times, a company might not be able to conduct as robust due diligence as it ordinarily would. He then noted that the U.S. government will ask: What did the company do to meet its compliance obligations and under the law?

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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