

Speaker 1 ([00:18](#)):

[inaudible]

Cuneyt Akay ([00:21](#)):

Welcome to the GT ABC podcast. I'm your host, Cuneyt Akay here. The GT stands for Greenberg Traurig and the ABC stands for anti-bribery and corruption. In this episode, we're going to turn our attention to anti-corruption enforcement and compliance in Latin America. We're going to discuss some enforcement trends and more importantly, offer some compliance suggestions for companies with operations in Latin America. And we'll even turn our attention to some specific challenges of doing business in Latin America. During the COVID-19 pandemic. My guest today is Adelaida Mihi, who is a shareholder in GT's Houston office. Adelaida focuses or practice on international compliance matters and councils companies doing business in international markets, particularly throughout Latin America. She designs compliance programs and advises on transactional due diligence issues. Writing arising out of various anti-corruption regulations. She spent a significant amount of time in Mexico, central America and South America, helping her clients develop sophisticated anti-corruption programs. I can tell you from a personal note that I've traveled enough times without a light, particularly in Mexico. And she always gets me out of trouble because she's a fluent native Spanish speaker. And I know about 10 words in Spanish. So having her to help me navigate through Mexico and Latin America has always been a godsend. So let's turn our attention to today's discussion and we'll start with Latin American compliance and Adelaida, what are the biggest challenges you see of doing business in Latin America?

Adelaida Mihi ([02:00](#)):

Hey, Cuneyt. Well, thanks for that introduction. Um, and yes, it is always fun to travel with you, um, in Latin America, Mexico, or otherwise. Uh, I'm glad that I said that every time you get to travel to Mexico, it's one of my favorite countries to visit for obvious reasons. But, um, with that said, I will jump into what I think are some of the biggest challenges of doing business in Latin America. Um, specifically from like an anti-corruption perspective, because obviously there are many challenges. Um, but from when you look at it from an anti-corruption perspective and particularly from a us, um, business perspective, you, these are some that kind of stand out to me kind of immediately. Um, so first of all, as many of you guys know listening into the podcast, and if you've ever accessed it's lovely, uh, international transparency index, um, you'll see that landing America as a whole, it is pretty medium to high height corrupt, um, various countries throughout Latin America.

Adelaida Mihi ([03:01](#)):

Um, so really there's an overall culture of corruption, right? So you've got to just understand that from the outset, um, and, and seeing that whether it's UN or dark orange or red on the transparency index, it gives you a sense of, okay. Um, from, uh, from just the foundation aspect of it. You've got to understand that that culture is, um, uh, generally corrupt. Um, and we are seeing some positive changes, uh, but what I'm, what I'm trying to get across here is that historically fraud has been, um, accepted throughout Latin America. Um, so that's a pretty big challenge. Second, last time conducts business in ways we would consider to be a bit informal. And what do I mean by that? So for example, it's very common to have this long-term relationship with a particular service provider and one never really have run due diligence on them, done any kind of investigation and also never have executed a contract.

Adelaida Mihi ([03:58](#)):

Um, so it's also common that maybe the service provider is a friend of a friend or a family member of an employee. You know, it's a lot in Latin America, you see a lot of connections of who knows who and, Oh, my brother got sick, he'd be great to do, you know, this particular service. And so that from a us perspective, that's very informal from an anti-corruption perspective, it's pretty high risk, right? We want to make sure that we understand who we're engaging here. Um, Latin America is also pretty informal when it comes to communication. So, you know, in the us, we're all about emails and contracts with service providers in Latin America. It's very common to communicate through WhatsApp, text messaging rather than a formal email. You know, if you need something from the company needs something it's really, really common to see, uh, you know, the responsible business person just texting their service provider and saying, Hey, can you get this done?

Adelaida Mihi ([04:50](#)):

Yes, yes. Your degree terms. Awesome. And you're going to negotiate it through WhatsApp. Um, so it really makes it hard to follow the negotiation and the engagement of a third party. The other challenge I want to mention this technology, um, in the U S most transactions can be done online in Latin America. Only certain transactions can be completed online. And even then the security is not as sophisticated and tends to be more complicated than to do just a simple in-person transaction. So it's affects online communication as well. So for example, government fees that are published online may be different than the fees you are charged when you show up to make the payments, right. And this can be due to inflation conversion rates, or simply because the government entity pays the fee related to that particular license or whatever transaction you're doing, but has not yet updated the fees listed online.

Adelaida Mihi ([05:42](#)):

So these technological limitations being that you should be prepared for business delays, but also that you need to adjust internal financial controls to support these particular limitations. Um, I want to know that what we consider maybe challenges in Latin America from a business perspective, uh, it's really just a way of doing business differently. Uh, and you just have to adjust to those types of circumstances and ensure that your controls are adequate to support those types of business transactions in the location that you're at. There's just a couple of general challenges in Latin America and from an FCPA perspective, what enforcement trends are you seeing in Latin America today?

Cuneyt Akay ([06:21](#)):

Well thank you Adelaida for giving us kind of a lay of the land in terms of the challenges of doing business. And that leads right into some of those enforcement trends that we're seeing in Latin America. So if we look at the statistics starting in 2018 through roughly the first half of 2020, so taking about a two and a half year time span, we've seen 10 corporate FCPA settlements involving conduct in Latin America. And those 10 corporate settlements have yielded nearly \$650 million in fines and penalties to the United States government. And the alleged conduct occurred in those 10 corporate settlements in Brazil, Mexico, Columbia, and Peru. And we've seen the industries that have been affected by these, uh, allegations to include the oil and gas industry, which has been certainly a common theme throughout Latin America. But we're also seeing industries such as construction, healthcare, financial services, retail marketing, and even the utilities industry be subject to some FCPA corporate enforcement settlements.

Cuneyt Akay ([07:30](#)):

Now from an individual standpoint, we've also seen over two dozen individuals charged with FCPA allegations or violations, and also FCP related crimes like money laundering and wire fraud for conduct

conducted in Latin America. And addition to the countries we just discussed the conduct. Also the alleged conduct of these individuals has taken place in Venezuela and Ecuador. And as we've discussed before on this podcast, individual enforcement is often a precursor to future corporate enforcement actions. So we will certainly keep our eyes to see if there'll be some corporate settlements coming out of individual conduct. That's occurred in places like Venezuela and Ecuador, and also some future corporate settlements or corporate actions resulting from the individual enforcement actions we've seen throughout Latin America. Now a recent trend in FCPA enforcement in general has been increased multi-jurisdictional cases and cross border cooperation. This is particularly true in Latin America, as Adelaida and I have both experienced and we've conducted FCPA and anti-corruption trainings in dozens of countries.

Cuneyt Akay ([08:46](#)):

Every one of the countries we've been to has an anti-corruption law, but most countries don't enforce their own anti-corruption laws. And this is changing in Latin America, as we're seeing more cooperation between Latin American countries in the U S government, and we're starting to see Latin American countries enforcing their own anti-corruption laws. And why are we seeing this well, really, for at least two different reasons. The first one comes down to money as it's become increasingly lucrative for Latin American governments to cooperate with the us government. And what we're seeing is that Latin American countries throughout the region are starting to hear this message loud and clear. And the proof is really in the pudding since 2018 foreign governments in Latin America have received almost \$1 billion in penalties from FCPA investigations. Most of this has been through, uh, the lava Jato operation carwash cases in Brazil, and the Brazilian government has collected almost as I've just mentioned, almost \$1 billion in penalties from these cross border cross border cases and multi-jurisdictional cases. The second reason is the us government has been making and is continuing to make corruption, particularly in Latin America. A priority. One example of this is that the FBI just started a new international corruption squad based in Miami, in March of 2019, and is clear from that squads focus, the corruption issues arising out of Latin America are going to be front and center for this FBI squad. Well, now we've talked about some enforcement trends. Adelaida what are some compliance suggestions you have for doing business in Latin America?

Adelaida Mihi ([10:31](#)):

My goodness Cuneyt the FBI squad I swore was happening this year, and I can't believe it's been over a year and a half on that 2020 has just assumed basically a quarter of my life, I think, um, as I'm sure it is for everybody, it just isn't as big a year. So let me, let me go into your question about some compliance suggestions, um, well, first of all, having an anti-corruption program is key, right? So the program should be clear on the risks that are present and the process required to mitigate those risks, right? To your program as a whole, particularly in Latin America needs to tell the, the, your employees and tell your service providers what the risks, um, that present itself as it relates to the company, right? And then for your employees, in order to comply with that program, you've got to lay out a very clear process that they must follow in order to mitigate those risks.

Adelaida Mihi ([11:27](#)):

So, you know, things should that the process should include things like the documentation requirements, including questionnaire, approvals, um, and acceptable methods of storing the documentation, you know, meaning whether you sort of documentation electronic or physical copies and have been physical copies, where are they so hard? Are you doing the electric part in a shared

folder? I mean, look, I can go on and on and on about the details, but I'll tell you what I experience. Um, when you are implementing a compliance program, an anti-corruption compliance program in Latin America, that the deep, the key is in the details, right? You've got to let people know what they have to do and what they, uh, where to store the information so that they can have evidence that they have completed the process as is required. Right. Um, I also stress the documentation requirement because of what I mentioned earlier, right?

Adelaida Mihi ([12:21](#)):

So of the communication, informalities what Latin America, Latin Americans, um, think of as, Oh, this should be sufficient from a UX perspective. We don't, we might classify that as insufficient. Um, so like the text messaging, right? We don't want to have to go searching for the text message that engages a third party provider. We'd actually like to see a contract or, you know, even a questionnaire from third parties that indicates that they've provided you with information, um, for you to sufficiently do some sort of diligence on them. Um, and it is important that the company is consistent with the documents. It is maintaining to support the compliance program. A lot of it is to one protect the company itself, but also to protect its employees. Um, I'd also suggest constant communication, constant, constant communication. Um, this is important throughout the program, but particularly as you're designing and implementing the program, uh, constant communication between compliance and the business, as well as constant communication between the business and its service providers, this really, really, uh, enforces that the message is consistent, right?

Adelaida Mihi ([13:30](#)):

That the company is about doing business, uh, the right way. And it is on board with, uh, fighting corruption, uh, and ensuring that it is processed. It's following the methods as designated in the program that they've developed for their, their own, uh, risks involved in the industry that they're in. Right? So the, the message, ensures that it's coming from the top, right? So the employees understand that they've got to be on board and the message from the business to the service providers helps in two ways, one that the service providers are clear as to what is required of them in order to be engaged by this particular company. And two, it helps because that if that constant messaging is going to the various service providers of a particular company, like I mentioned, at the beginning of this podcast, Latin America is a very small community and the word will spread, right?

Adelaida Mihi ([14:29](#)):

So a service provider engaged with the company who has a clear anti-corruption program and is very consistent in their messaging with respect to the requirements, to be onboarded as a service provider for that particular company will be spread amongst all the various, you know, comp competitors for a particular service that they're providing, et cetera. You start getting a little bit more of the competition amongst the different service providers and stuff, spreading a bit of the anti-corruption mentality and ensuring that, um, the service providers are doing business correctly, uh, not engaging in any type of misconduct, particularly when it comes to your type of system. Um, the other thing about consistent messaging is it starts to really, really improve the reputation of the company. Um, and that means in terms of the industry that you, that the company is a part of, but also more importantly, when it comes to corporate transactions.

Adelaida Mihi ([15:29](#)):

And this is something that I've been seeing lately. And I'll say by lately, I mean, pre COVID, COVID had a little bit of an impact. And I think Cuneyt you'll, you'll be asking me a little bit about that later, but I did want to point out that I having these consistent messaging. It also puts the company itself in a different sort of realm in terms of if ever it decides to go into some sort of corporate transaction. Um, it will already have policies and procedures in place that would mitigate any type of internal diligence with respect to its compliance for the local anti-corruption laws, but also from an FCPA perspective, is it compliant, it's compliant with the FCPA, meaning that possibly investing in the company means you're lowering a bit of your liability risk, um, with respect to violations of the FCPA. So things to consider, you know, um, and it's, for me, I think that's, that's a sign and it's indicative of a bit on what Cuneyt was talking about in terms of Latin America, starting to come get on board with these anti-corruption laws and ensuring that the business is starting to, um, really operate in that kind of in that way and starting to change a bit of the cultural corruption that we've seen historically.

Cuneyt Akay ([16:44](#)):

Well, Adelaida thank you for the compliance suggestions. And as we've touched upon a couple of times, and as both of us know, and the audience listening certainly knows 2020 has been a crazy year, particularly with COVID-19 and the pandemic. So from your perspective, what special considerations or challenges do you see with the current situation during this pandemic for companies operating in Latin America?

Adelaida Mihi ([17:09](#)):

Yeah, and I, you know, this question is it's a really good question that also sometimes hurts my heart. I'm like, no, we were seeing such good things in Latin America, all this cooperation, these cross borders, you know, interactions and anti-corruption laws, um, and then even started seeing some enforcement of the local anti-corruption laws. Um, and quite frankly, um, you know, with COVID, we're seeing that kind of go away, not necessarily disappear, but it's become less of a priority. So like Cuneyt mentioned earlier, and, you know, you know, as we've seen in early 2019, even back in 2018 and 17, you know, we were starting to see countries like Brazil, Peru, and Mexico really get on board with developing these anti-corruption laws and not only developing the law, but actually thinking about how they're going to enforce them. Right. So coming up with penalties, um, that, you know, designating certain entities that would be doing some investigation.

Adelaida Mihi ([18:09](#)):

So it's been, it was really good progress with respect to, um, uh, combating corruption and throughout Latin America. However, with COVID we have seen a bit of a recession in the anti-corruption business, but some would even argue that these efforts are completely gone and there is a much higher risk of corruption for many reasons. One reason is that there are now competing concerns with corruption, you know, because of the pandemic, the economies around the world are struggling and countries care more about things like unemployment rates and health concerns more than they do about fighting corruption. Uh, as an anti-corruption lawyer myself, I'm like, no, no, you still have to focus on corruption. But when, you know, you start seeing unemployment and these really big health scares, you could understand how priorities have shifted. Um, what's disappointing about it is because of the shift in priorities.

Adelaida Mihi ([19:02](#)):

We're also seeing that there are less resources dedicated to enforcement of the newly enacted anti-corruption laws. So instead we're seeing massive amounts of government resources being spent on things that are not related to corruption and really just the sort of state of the economy, and also a bit of the urgent nature of the pandemic, right? So those two combined means not only are resources being diverted from combating corruption, but also the deviation of the resources and the urgent nature of what's going on with the pandemic. It's creating higher corruption risks because the internal controls are being overlooked mostly because of it being sort of an emergency. And as we've all seen from one day to the next, COVID-19 is a bit of our world, right? So, um, I'll give you an example, you know, with the resources changing and the urgent nature, what we're seeing are less competitive bids, you know, competitive bids provide many controls in combating corruption and without them, there is a much higher opportunity for misconduct. So without competitive bids, you're not really able to monitor like what the right price is and whether or not, you know, funds are being spent in a correct manner. And it does, like I mentioned, um, provide for the opportunity of misconduct, right? So generally like most economies around the world, Langham is facing some difficult times and given its history and the new anti-corruption laws, which have not had an opportunity to be fully implemented, we are seeing that the pandemic is hindering Latin America's ability to fight corruption.

Cuneyt Akay ([20:37](#)):

Adelaida thank you for those compliance suggestions, but also for providing some real world examples and some special considerations during this pandemic for companies that operating in Latin America. Now, in this episode, we've discussed Latin American enforcement discussed the challenges of doing business in Latin America and offered some compliance suggestions, not only in general, but also during these challenging times during the pandemic, there are really three key takeaways I have for today's episode one, Latin America can still be a challenging place to conduct business because a culture of corruption still exists in certain countries in certain industries and businesses often conducted very informally. And as I mentioned, there are technological limitations that may still exist. Second FCPA enforcement, both in terms of corporate and individual enforcement cases involving alleged misconduct in Latin America continues to be robust, particularly because the U S government is devoting more resources and attention to Latin American corruption.

Cuneyt Akay ([21:44](#)):

But also because Latin American countries have been more open to cross border cooperation. And multi-jurisdictional investigations finally for companies doing business in Latin America, clear processes, constant communication and diligent record keeping and documentation are even more important due to the unique challenges of doing business in the region. The compliance needs maybe particularly heightened during this pandemic as the region is facing some very difficult health and financial times, which as Adelaida mentioned, may create even higher corruption risks. Thank you for tuning into this episode of the GT ABC podcast. And thank you Adelaida for joining us on this episode.

Speaker 1 ([22:48](#)):

[inaudible].