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Effective third-party due diligence in Latin America

By Melina Llodrá and Mariana Idrogo

Melina Llodrá (mll@lloдра.law) is Founder and Partner for LLODRA attorneys-at-law in Buenos Aires, Argentina. **Mariana Idrogo** (midrogo@g5integritasLatam.com) is Founder and Senior Managing Director for G5 INTEGRITAS in Buenos Aires, Argentina.

An organization can have multiple third parties, all of which need to be put through a due diligence process in order to identify, mitigate, and avoid all potential risks and concerns. Having said that, this due diligence process is not an easy task and very often triggers difficulties.

What are the common challenges?

Lack of time, lack of supportive documents, and even lack of cooperation from relevant parties are some of the challenges that you might experience when undertaking a third-party due diligence process. Even during the last two years there has been an increase in these challenges due to the COVID-19 pandemic.

In addition to these difficulties, Latin America (LATAM) has its own set of challenges. In LATAM, not all countries are the same in terms of compliance regulation and culture. It is essential to understand the local flavor, such as the local culture, language, and framework. For instance, there are many circumstances where everyday practices do not match with local requirements.

One of the biggest challenges in LATAM is the difficulty accessing public information and having to hurdle inaccuracy and out-of-date information. This is due to the lack of a virtual database and problems with connectivity. So, where are we heading? To answer this question in a simple way—there has been great progress, but there is still a lot to be implemented.

What is effective due diligence?

Law 27.401 establishes the following two principles: *corporate criminal liability* and *successor liability*.^[1] The former refers to bribery-related offenses of third parties acting in the organization's name, interest, or benefit even when this individual had no powers to do so. The latter reinforces the need of due diligence in case of transformation, merger, split, or any other corporate modification.

If an organization is dealing with the local public sector, in most cases the implementation of the so-called integrity program (commonly known as a compliance program) would be required, according to this law. The compliance program should include, among other things, an ethics code, integrity policies and procedures, periodic training, as well as rules and procedures to manage the interaction with the public sector.

It also highlights the importance of the procedures to prove the integrity and track record of third parties or business partners, including vendors, distributors, service suppliers, agents, and intermediaries. At the time of hiring their services and during the business relationship, third-party due diligence is a key element of the



Melina Llodrá



Mariana Idrogo

compliance program.

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