

The Complete Compliance and Ethics Manual 2023

Anti-Corruption Laws/Regulations in Latin America

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This section of the manual provides an overview of the corruption landscape, the socioeconomic and political environment, and the legal framework in Latin America and the Caribbean (Latam). This article will focus on six of the biggest economies in the region (Argentina, Brazil, Chile, Colombia, Mexico, and Peru), including a comparison of the current legislation in these countries, to allow a better understanding for organizations and compliance professionals that are considering corruption risks associated with their operations in Latam.

Corruption Landscape

As in other regions of the world, the specific corruption risks in Latam vary from country to country, but some consistencies exist across the region. For example, most countries in the region rank below 50 in the Corruption Perception Index (CPI) published yearly by Transparency International.^[2] The CPI score relates to the degree to which corruption is perceived to exist among public officials and politicians by businesspeople and country analysts. Score ranges between 100 (highly clean) and 0 (highly corrupt). The average risk score for Latam according to the 2021 CPI is 41.2, which is slightly down from last year. Any rating below 50 indicates that countries are perceived as failing to fight corruption.

When comparing last year's CPI scores with those of 10 years ago, one can see that progress has been made by many of the countries in Latam, although there is still a long way to go in the fight against corruption.

Country	Change in Score: 2020–2021	CPI Score 2021	CPI Score 2010
Uruguay	+2	73	69
Chile	=	67	72
Barbados	+1	65	78
Bahamas	+1	64	–
Saint Vincent and the Grenadines	=	59	–

Country	Change in Score: 2020–2021	CPI Score 2021	CPI Score 2010
Costa Rica	+1	58	53
Saint Lucia	=	56	-
Dominica	=	55	52
Grenada	=	53	-
Cuba	-1	46	37
Jamaica	+1	44	33
Trinidad and Tobago	=	40	36
Columbia	=	39	35
Guyana	-2	39	27
Suriname	-1	39	-
Argentina	-4	38	29
Brazil	=	38	37
Ecuador	+3	36	25
Panama	+1	36	36

Country	Change in Score: 2020–2021	CPI Score 2021	CPI Score 2010
Peru	-2	36	35
El Salvador	-2	34	36
Mexico	=	31	31
Bolivia	-1	30	28
Dominican Republic	+2	30	30
Paraguay	+2	30	22
Guatemala	=	25	32
Honduras	-1	23	24
Nicaragua	-2	20	25
Haiti	+2	20	22
Venezuela	-1	14	15
REGIONAL AVERAGE		41.5	36.8

These low CPI scores reflect the general belief of individuals and organizations that corruption is part of local business practice, and for decades they have learned to live with it. One does not need hard data to see that corruption is embedded in many sectors of society across Latam. It is felt every day by millions of citizens in their dealings with law enforcement, the judicial system, educational and health institutions, utility service

companies, and document processing agencies. According to the 2019 Transparency International report on Latin America and the Caribbean titled *Citizens' Views and Experiences of Corruption*:

- Most people in the region saw the level of corruption increase over the previous 12 months;
- An overwhelming majority of people (85%) think that government corruption is a big problem;
- Politicians, government officials, police, and judges were perceived as the most corrupt public sectors;
- More than half of the people said that their government was not successful in fighting corruption;
- One out of five people using public services paid a bribe in the previous 12 months;
- Police, utility companies, and identity document agencies were cited as the most likely to demand bribes; and
- Only 27% of people have trust and confidence in the judicial system.^[3]

Another useful data point is the newly created Capacity to Combat Corruption Index (CCC Index) and corresponding annual report created by Americas Society/Council of the Americas and Control Risks.^[4] The report evaluates and ranks Latin American countries (from 0 to 10) based on how effectively they are able to combat corruption. The CCC Index is based on multiple data points and a proprietary survey conducted among the private sector and local anti-corruption experts. It focuses on three categories: legal capacity; democracy and political institution; and civil society, media, and the private sector.

Country	CCC Index 2020
Uruguay	7.78
Chile	6.57
Costa Rica	6.43
Brazil	5.52
Peru	5.47
Argentina	5.32
Colombia	5.18

Country	CCC Index 2020
Mexico	4.55
Ecuador	4.19
Panama	4.17
Guatemala	4.04
Paraguay	3.88
Dominican Republic	3.26
Bolivia	2.71
Venezuela	1.52
REGIONAL AVERAGE	4.7

The results highlighted on the CCC Index and annual report on key variables, such as judicial independence and efficiency, access to public information and overall government transparency, level of international cooperation on law enforcement, overall quality of democracy, and quality of the press and investigative journalism, are discouraging and trending backward in terms of progress in the fight against corruption.

The 2020 *Latin America Corruption Survey*^[5] —carried out last year by a consortium of law firms in Latam among representatives of local/regional companies, multinational corporations, and private and publicly traded companies (corruption perception in the private sector)—reveals the following:

- The majority of survey respondents (54%) say that corruption is a significant obstacle to doing business.
- Political parties, followed by the legislative branch and the police, are named as significantly corrupt by respondents.
- Eighty-four percent of companies surveyed have developed anti-corruption policies, and 70% of those also

provide anti-corruption training and have implemented other anti-corruption measures.

- There is a steady increase of companies in the region, especially multinational companies, that have mature anti-corruption programs.
- Companies surveyed in the countries in which this article focuses (Argentina, Brazil, Chile, Colombia, Mexico, and Peru) were found to have more mature compliance environments (many aspects of a best practices compliance program).
- More than half of survey respondents (57%) confirm that their companies have established full-time compliance personnel.

Socioeconomic and Political Factors

Another common denominator in the region is income inequality and the fact that social class differences are still very prominent. According to a brief issued by the World Inequality Database on November 10, 2020, “in Latin America, the top 10% captures 54% of the national income, making it one of the most unequal regions in the world.”^[6]

In the early 2000s, Latam enjoyed an economic boom that came to a halt in 2014. During those years of high growth, the percentage of people living in poverty in the region fell from 42% to 26%, while the middle class grew from 22% to 34%.^[7] Nonetheless, income inequality is still very visible, and much of the wealth in Latam is in the hands of a small number of individuals. A lot of that wealth ends up reinvested abroad or placed in bank accounts in tax havens such as Panama, the Cayman Islands, or the Bahamas, sometimes leading to tax avoidance or evasion. Tax avoidance and evasion is a worldwide problem, but it is certainly widespread in Latam, as evidenced by the Panama Papers scandal of 2015^[8] and the recent Pandora Papers investigation by the International Consortium of Investigative Journalist made public in October of 2021.^[9]

When doing anti-bribery and corruption due diligence in Latam, it is common to come across large conglomerates owned by powerful families, who typically have ties to politicians and other influential individuals in their countries.

Democracy is still young in the region. Going back to the 1980s, there were only three full democracies in Latin America, while now all countries except two (Cuba and Venezuela) have democratic governments. With democracy came better education and a rise of the middle class; however, in recent years, the slowdown of Latin America’s economy coupled with public frustration over corruption scandals, nepotism, impunity, and weak public institutions are creating more political instability and social unrest. This presents a more complicated landscape in the region when it comes to preventing corruption.

Social unrest and political instability are also important factors in the minds of those individuals in top economic brackets, creating more secrecy around their personal finances and business operations. This makes it more difficult for compliance professionals to obtain beneficial ownership information when doing anti-corruption due diligence. Personal safety is commonly brought up to excuse the secrecy around beneficial ownership, so compliance and ethics professionals must be creative in securing this information.

Social and political discontent in recent years has given rise to a number of populist leaders who, in some cases like Brazil and Mexico, framed their political campaigns around the fight against corruption. Time will tell the impact of these political changes. Financial challenges and income inequality will likely continue to increase in the region due to the economic problems resulting from the COVID-19 pandemic, and governments may consolidate power and eliminate checks and balances with the excuse of tackling the crisis. The predictions for

the region resulting from the pandemic are not hopeful, and the crisis may undermine the progress made in certain countries over the last decade. According to an article published by the Brookings Institute, “the longer-term implications of the crisis are grim, and the social, political, and economic consequences could be dramatic.”^[10]

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