SPECIAL REPORT

Compliance and reputation in the good corporate governance era

Lima, october 2018

d+i developing ideas
LLORENTE & CUENCA

CONTEXT

For at least a decade now, we have been living through fast-moving changes owing to corruption scandals and precarious justice systems which very often, despite being the parties who have been commissioned to pursue and impose sanctions on these offences, prove to be the source of this scourge.

The cost of corruption is a global problem. The IMF estimates the annual cost in 2016 at between US$1.5 billion and $2 billion per year for the world economy, accounting for almost 2% of the planet's GDP.[1] In Latin America – even before scandals such as Odebrecht – the cost was put at around 58% of the GDP per capita of the region. The impact is so large because it affects procurement, judicial and financial systems, creating a parallel economic system and dissipating public resources.

This has been a wake-up call for the financial control and justice systems, but has also driven prevention mechanisms, such as compliance, whereby organizations implement procedures to ensure internal and external normative compliance.

[1] http://www.eleconomista.es/economia/noticias/7558130/05/16/El-FMI-estima-que-la-corrupcion-cuesta-hasta-2-billones-de-dolares-al-ano-a-la-economia-mundial.html

Originating in the English-speaking world, and also the direct consequence of corruption scandals during the 1970s and 1980s in the United States, compliance has gradually extended its reach. This intensified with the 2008 financial crisis that began on Wall Street, revealing an array of ethical breaches, inappropriate corporate management processes and financial regulation failings.

A further issue which came to light during the crisis and subsequent recession, were the difficulties in applying both domestic and international criminal law. Years later, for example, not one of the Wall Street leaders has been sentenced. What's more, in the majority of cases, criminal proceedings have not initiated. The exception is Iceland, where at least 26 bankers were sent to jail for the same types of fraud.[2]

This crisis has shown a limiting factor which should be looked at from a more regulatory and supervisory approach. Emphasis should be placed on prevention, and hence compliance has once again taken a leading role. Although this concept is not new, what is new are normative frameworks regarding the criminal liability of corporate bodies and the obligation that companies now have to implement compliance programs and independent departments to detect and avoid any breaches of law.

This article explores compliance as a concept within the context of the drive towards good corporate governance, its ongoing implementation in Latin American countries, landmark cases and how this relatively new concept is now meeting normative requirements. We will also be looking at the remaining challenges in ensuring the effectiveness of compliance. And finally, we'll explain how it also constitutes a new pillar for managing and improving companies' institutional reputation. This interpretation will allow us to raise or recognize the challenges and tendencies of compliance for the future.

---

[2] Barak, Gregg. The Invisibility and Neutralization of the Crimes of the Powerful. The Case of Multinational Corporate Crime (UBA)

"The concept of compliance is not interchangeable with that of good corporate governance (GCG). Compliance requires, through regulatory standards imposed by the government, an internal governance structure deriving from external agents"

1. FROM GOOD CORPORATE GOVERNANCE TO THE COMPLIANCE CONCEPT

The concept of good corporate governance (GCG) has been around for some time now as a foundational attribute in any healthy organization. It is a governance system based on high standards of transparency, professionalism and efficiency which generate confidence in the market and augment, in the long-term, the value and competitiveness of the company or organization. It is also a transparent, professional form of relationship between the board of a company, management and the rest of the organization.

This formula sets out to protect the interests of stakeholders, particularly shareholders, from any ethical conflicts which may jeopardize the long-term sustainability and short-term profitability of their companies. It is geared towards making their investment profitable and safeguarding their assets. With this in mind, it must ensure access to timely, quality information which facilitates positive decision-making for the long-term reputation and profitability of the company.[3] This is also set out by the OECD in its Principles of Corporate Governance for G20 member countries.[4]

Although GCG has been in force for a long time as a transparent form of internal organization, it did not incorporate any legal or regulatory obligation for companies. It was more in line with a typical internal structure model deriving from the board of a company, such as corporate or safety regulations. It was simply a good *modus operandi* and, to be honest, in various countries it only gathered steam over the last few years and is far from being a truly extensive practice.

The concept of compliance is not interchangeable with that of GCG, as the model requires, via regulatory standards imposed by the government, an internal governance structure deriving from external agents.[5] It is the difficulty or impossibility of governments to legally pursue companies after cases of corruption which makes it urgent for companies to achieve compliance with certain (legal) requirements to do business.

---

[3] For example, according to information from the Lima Stock Exchange (BVL), the companies making up the Good Corporate Governance Index (IBGC) listed their shares at a premium with regard to the companies of other local indices.

[4] OECD (2016) Principles of Corporate Governance of the OECD and the G20, Editions OECD, Paris. http:/dx.doi.org/10.1787/98789264259171-es

[5] Corporate Governance in an era of *Compliance*. https://corpgov.law.harvard.edu/2016/05/10/corporate-governance-in-an-era-of-*compliance*

"Lack of compliance may give rise to loss of corporate reputation and, for a company, that means economic and financial value losses"

And so compliance has emerged, the new corporate governance, as Sean J. Griffith from Fordham Law School calls it, which is gradually becoming an ever stricter regulatory requirement to prevent offenses.[6]

WHAT DO WE MEAN BY COMPLIANCE?

Compliance refers to the internal and external normative compliance of companies through the management of corporate strategies to prevent criminal conduct by organizations. These include the regulation of good practices, the creation of a Code of Ethics, regulation of the securities' market, risk prevention, data protection, mapping risks of bribery, money laundering, etc.

Rather than a result, it is a set of procedures: tools that organizations adopt – usually required by a regulatory standard – to identify and classify the operating and legal risks they face. This allows them to establish internal mechanisms for the prevention, management, control and reaction to these threats which differ in line with the nature of each business.[7] These risks do not only arise from corporate decisions, but also from the activity of employees. What's more, it is not only a matter of avoiding the risk deriving from offenses, but also those which run counter to integrity and ethics.

Although this emerges as a legal obligation to achieve exemption or prevention of criminal liability of the corporate body and its consequences, compliance may take on a broader focus. Lack of compliance may give rise to loss of corporate reputation and for a company that means economic losses and losses in financial value, if not a death sentence. However, its value not only focuses on complying with a requirement, but also on an opportunity to manage companies within the context of an ethical, transparent culture with new efficiency opportunities.

Compliance, or adapting company management to compliance requirements, is also reflected in the structure and organization of the latter. Although new compliance departments have emerged as a type of new area reporting to the Board, the authority of its compliance officers, for example, has greater significance inside the company as they are backed up by the law. They

[6] Corporate Governance in an era of *Compliance*. https://corpgov.law.harvard.edu/2016/05/10/corporate-governance-in-an-era-of-*compliance*

[7] www.world*compliance*association.com

"The compliance officer is a key figure and must be permanent, independent and effective to help top management"

are responsible for adopting, applying and maintaining necessary policies and procedures.

The compliance officer is a key figure and he/she must be permanent, independent and effective to help top management monitor and evaluate the preventive and corrective measures, which are already an obligation of the company.

2. HOW HAVE STANDARDS IN THIS REGARD BEEN IMPLEMENTED IN DIFFERENT COUNTRIES?

As mentioned, this concept derives from the English-speaking world in the 1970s and 1980s as a result of the U.S. Foreign Corrupt Practices Act (1977),[8] which imposes corruption and bribery sanctions, even outside its geographic borders. Under this law, any company whose registered office is situated in the United Stated, which forms part of a U.S. firm, which invests, or which has been hired by a company with U.S. connections, may be judged under this law. In the UK, following a scandal involving BAE Systems PLC, compliance gathered momentum with the Bribery Act (2010), rated as one of the strictest legislations worldwide, having previously ratified its commitment to the OECD Anti-Corruption Convention.

Offenses committed by legal entities seeking gain are occurring in an increasing number of countries. Some states have adopted the recommendations of international bodies to

[8] In 1988 the FCPA was modified and negotiations were held with OECD members about prohibiting bribes in international transactions for the biggest trading partners of the U.S. Subsequent negotiations in the OECD culminated in signing the Anti-Bribery Convention which required parties to regard the bribing of foreign officials as an offense. In 1998 the FCPA was modified again to comply with said Convention.

"Compliance regulation encompasses the various normative blocks affecting business activity, as well as those commitments voluntarily incorporated by companies"

incorporate criminal liability for legal entities.[9] The possibility of making these entities (and not only individuals) liable conveys the message that corruption has no place in business.

Most legal systems determine corporate self-accountability models. These are characterized by the responsibility of the organization which, although it assumes an offense committed by an individual, is based on the recognition of a non-compliance with certain duties and supervision by the organization itself. However, it is not a homogeneous tendency: countries like Spain already foresee exemption from criminal liability for corporate bodies with regard to the formation of compliance systems, but others, such as Portugal, still don't take this into account.

Compliance regulation encompasses the various normative blocks affecting business activity, as well as those commitments voluntarily incorporated by companies (so-called self-regulation). This compliance concept is laid down in international standards (ISO 19600 on the Compliance Management System and ISO 37001 on the Antibribery Management System).

[9] For example, article VIII (Transnational bribery) of the Inter-American Convention against Corruption (IACAC; 1997), article 2 (Liability of corporate bodies) of the OECD Convention on combating Bribery of foreign public officials in international business transactions (ABC; 1999) and article 26 (Liability of corporate bodies) of the United Nations Convention against Corruption (UNCAC; 2003). By dint of the stipulations of Article 2 of the OECD Convention on combating Bribery of foreign public officials in international business transactions (Anti-bribery Convention) and Article 26 of the United Nations Convention against Corruption (UNCAC), each of the signatory States undertakes to adopt ¨the necessary measures, in accordance with their legal principles, to determine the liability of corporate bodies" for the bribery of a foreign public official and other corruption offenses. The liability of corporate bodies may be criminal, civil or administrative. Article VIII of the Inter-American Convention against Corruption (IACAC) declares that each Party State "will prohibit and subject to sanction the act of offering or granting to a public official of another State, directly or indirectly, by its nationals, people who have habitual residence in its territory and companies whose registered office is situated there."

The table below shows the national standards which regulate the liability of corporate bodies in terms of corruption owing to corruption offenses in an administrative, civil or criminal context.

Figure 1. Table showing the regulations and implementation year by country

Countries	Regulation on the liability of corporate bodies	Implementation year
Spain	Organic Act 5/2010; art. 31 Bis CP	2010
Portugal	Act 59/2007	2007
Mexico	General Act on the National Anti-corruption System	2016
Dominican Republic	Act No. 155-17	2017
Panama	Act 23	2015
Colombia	Act 1778	2016
Ecuador	Executive Decree No.1331	2016
Peru	Act 30424; DL 1352; Act no. 30835	2016/2017/2018
Chile	Act 20.393	2009
Brazil	Act 9.605/98/, Act 12.846/2013	1998/2013
Argentina	Act 27.401	2017

Source: drawn up by the author

"In Spain, 78% of companies with more than 5,000 employees have a compliance officer position"

In Spain, the Criminal Code determines the criminal liability of companies in 2010 under Organic Act 5/2010. However, in 2015, article 31 bis of the Criminal Code specifically laid down the requirements to be met by a program geared towards compliance or the prevention of criminal risks: the desire of the administration body to draw it up and implement it, the identification of criminal risks, the creation of the compliance officer figure or compliance entity inside companies, setting up a channel for reporting irregularities, allocating sufficient financial resources, training and awareness campaigns and an ongoing review both of risk analysis and implementation of the supervisory and control measures recommended. In other words, the compliance function is incorporated over and above mere criminal prevention.

At present, the vast majority of Spanish organizations have an internal compliance policy, as well as specific corporate posts to supervise compliance with the program, using a map or inventory of compliance risks as well as codes of ethics or conduct.

The biggest companies have been the first to implement this post in their organization; 78% of companies with more than 5,000 employees have a compliance position, whilst this percentage falls to 38% in companies with less than 5,000 employees. The tendency is for a specialized compliance team incorporating a compliance officer. This team usually reports directly to the board of directors, thereby ensuring its independence[10] and reinforcing the governance bodies with regard to management actions.

This year, by way of a Supreme Court ruling, it was acknowledged implementing compliance programs constitutes good business *praxis* and are not only important in terms of the company's criminal liability when offenses affect third parties unrelated to the organization, but also to preserve its reputation.[11]

Portugal, in turn, considered the criminal liability of corporate bodies in terms of economic infringements and offenses against public health under Decree-Law no.28/1984. Twenty years later, Act 59/2007 was incorporated into the Criminal Code and extends this liability

[10] The compliance function in the Spanish company. Deloitte España. Corporate governance. www2.deloitte.com/es/es/pages/governance-risk-and-*compliance*/articles/la-funcion-*compliance*-en-la-empresa/.html

[11] https://insights.redflaggroup.com/the-red-flag-group-espa%C3%B1ol/la-evoluci%C3%B3n-del-*compliance*-en-espa%C3%B1a-del-c%C3%B3digo-olivenza-al-tribunal-supremo

"In Latin America, Chile is the leading country in compliance which, as a result of the obligations it has assumed under the OECD Convention, established the criminal liability of corporate bodies"

to a wide range of offenses committed by individuals who hold an authority position in the company. This is why the illicit act must be committed in the name of, and representing, the entity, and in its specific interest. But being intimately linked with the regular activities of the individual in the organization,[12] there is no exemption for those cases in which compliance programs are implemented.

In Latin America, **Chile** is the leading country in compliance which, as a result of the obligations it has assumed under the OECD Convention, enacted in 2009 Act 20.393, which established the criminal liability of corporate bodies. The underlying principle did not lie in the commission of the illicit act by an individual bound to the entity, but rather in non-compliance by the company with its management and supervisory powers. The scope of the criminal liability was reduced to just three illicit acts: asset laundering; financing terrorism; and bribing national and foreign public officials. However, this regulation urges implementing an offenses' prevention model, as well as a compliance officer, which enables companies exempt from liability in the event any employee incurs the offenses typified in the law.

Peru has followed the Chilean example and, under its Act 30424 dated 2016, implemented the administrative liability of the corporate body, but only for the offense of active transnational bribery. January 2017, DL 1352 modified Act 30424's articles, extending the administrative liability of corporate bodies to asset laundering offenses and others related to illegal mining and organized crime. August that year, under Act 30835, two new offenses were included: collusion and influence peddling.

Argentina approved Act 27.401 in 2017, which determines the criminal liability of corporate bodies for some specific offenses: national or transnational bribery and influence peddling, negotiations incompatible with the discharge of public office, extortion, unjust enrichment of officials and false balance sheets and reports, with companies being exempt from criminal

[12] Illicit acts are those specifically considered, with the following being worthy of special mention: mistreatment (article 152-A); violation of safety standards (art. 152-B); slavery (Article 159); human trafficking (article 160); some offenses against sexual freedom (articles 163 to 166, if the victim is a minor, and articles 168, 169 and 171 to 176); fraud offenses (article 217 to 222), racial or sexual discrimination (article 240); forgery of documents (art. 256); forgery of technical reports (art. 258); money forging offenses and some common danger offenses (art. 262 to 283 and 285), criminal association (art. 299); influence peddling (art. 335); disobedience (art. 348); violation of impositions, prohibitions or interdictions (art. 353); bribery (art. 363); obtaining a personal benefit (art. 367); money laundering (art. 368-A) and corruption (art. 372 to 374).

"In Argentina, a central aspect is the inclusion of the Integrity Programs, which are mandatory for those companies that contract with the state"

liability. These offenses were only interpreted in this way in cases in which the individual who committed the act has acted to his/her sole benefit and without generating any advantage for the company. A central aspect is the inclusion of the Integrity Programs, which are mandatory for those companies that contract with the state.

In the case of **Ecuador**, an Organic Act was passed July 2016 for the Prevention, Detection and Eradication of the Offense of Asset Laundering and the Financing of Offenses, which sets out to boost surveillance of the movement of funds and determine the bases for the prevention of asset laundering. This new regulation sought to implement a duty of diligence allowing the instigation of effective prevention mechanisms by means of augmented surveillance parameters.

In 2016, **Colombia**, under Act 1778, introduced the liability of corporate bodies for transnational acts of corruption and other provisions pertaining to combating corruption. This law entailed a commitment to generate transparency in all transactions carried out by companies. Compliance programs were also regarded as elements for undermining the criminal liability of corporate bodies.

In **Brazil**, with the exception of those offenses related to the environment – Environmental Crimes Act (9.605/1998) – companies cannot be criminally liable for the acts and omissions of their employees or of their third parties. However, it is possible for companies to be subject to civil and/or administrative liability for these acts. For example, Act 12.846/2013 (Clean Companies of Brazil act) imposes civil and administrative liability of legal entities for acts committed against foreign public administrations, particularly for acts related to corrupt practices.

In **Mexico**, the criminal liability of corporate bodies was introduced with the National Code of Criminal Procedures (CNPP) introduced March 2014, modified June 2016 when practically all the regulations that had existed up until that time were changed to take criminal proceedings against corporate bodies (articles 421 to 425) and the requirement was introduced for companies to incorporate a normative compliance program allowing them to exclude criminal liability which, directly and

"In the event the company's activities are on an international scale, good practices will have to be accredited under ISO 37001"

independently, may now be assumed by collective bodies.[13]

Finally, **Panama**: Act 23, enacted April 2015, regulated the international supervision, control and cooperation mechanisms in the field of the prevention of money laundering, terrorism financing and the proliferation of weapons of mass destruction.

INTERNATIONAL STANDARDS

Late 2015, the International Organization for Standardization published ISO 19600 on the Compliance Management System (CMS), a specific standard which allowed organizations to use a specialized tool to identify and minimize risks.

These are guidelines about the implementation, evaluation, maintenance and improvement of an effective, efficient compliance management system. It is a collaborative document for top management and compliance officers. In theory, it is not certifiable, although companies thinking about certification should follow its guidelines. In the event the activities of the company are on an international scale, good practices will have to be accredited under ISO 37001, which sets requirements for implementing this management system in the organization, helping them to properly prevent, detect and manage any possible criminal bribery conduct. It also requires procedures put in place to prevent them.[14]

3. ARE COMPLIANCE PROGRAMS REALLY EFFECTIVE?

RELEVANT CASES

Siemens

Measuring a compliance program's impact is complicated as they are specifically intended to ensure new cases of this type do not occur. Hence, their absence or non-existence will not

[13] https://elmundodelabogado.com/revista/posiciones/item/necesitan-las-empresas-en-mexico-un-programa-de-*compliance*-penal

[14] The standard refers to gifts, entertainment and hospitality, political or charitable donations, official public trips, expenses defrayed on promotion, sponsorship, membership of clubs and personal favors, amongst other actions.

"The corruption scandals of the past 15 years are related to failures in risk management, but in many cases not solely due to technical aspects, but rather serious ethical shortcomings"

necessarily be attributable to a compliance program. However, if they do occur, it is feasible to attribute this to a failing of the latter.

What is complex about compliance is that, although it is made up of a series of tools and procedures, its effectiveness largely depends on business behavior or conduct and, in many cases, on the principles, values and standards whereby the highest level of business leadership is managed. A compliance and transparency culture must be put into place in the company's corporate culture. The corruption scandals of the past 15 years are related to failures in risk management, but in many cases the latter are not solely due to technical aspects, but rather serious ethical shortcomings.

Although compliance initiatives are implemented in accordance with international guides, they vary in line with the sector, program maturity and company history. Companies which have already been through a major scandal now seem to have more effective programs. The reputational damage led them to do everything possible to prevent these scandals from reoccurring.

Emblematic cases have resulted in better compliance systems. Perhaps the case which marks a before and after in this regard is that of **Siemens**, the well-known German company, which was fined more than US$1.5 billion for bribery and corruption offenses committed from the end of the 1980s to the first decade of this century. In 2008, as a result of an investigation carried out in the United States which was endangering their business there, Siemens AG admitted to illegal payments and identified some of the recipients, among them high-level politicians. It also indicated that the bribing of officials was a widespread practice it had carried out in other countries affecting almost 300 contracts. Further to this scandal, the World Bank signed an agreement with Siemens AG which included the company's commitment to pay US$100 million during the next 15 years to support anti-corruption programs, change

"Siemens AG launched its Integrity Initiative December 2009 and adopted an ethical, transparent management culture at top management level"

industrial practices, clean up supply practices and commit to collective actions with the World Bank Group.

Within the context of this agreement, Siemens AG launched its Integrity Initiative, in force since December 2009, which includes support for organizations and projects fighting against corruption and fraud by means of collective education and training actions. They include signing the Global Compact against Corruption in 2010 which financed anti-corruption projects which would involve a disbursement of US$4.35 million by the company.

Siemens AG also decided to remove the entire management team and implement tough internal mechanisms. This company adopted an ethical, transparent management culture at top management level, as well as tools, including a Code of Conduct in Business and a Compliance System. The Code applies not only to advisors and business partners who act in the name of Siemens, but also to suppliers, business partners and other entities they do business with. The compliance system was developed at three levels of action: prevention, detection and response. It is, in theory, one of the most far-reaching models that has been implemented, taking eight years to complete. Today, Siemens is once again a company recognized worldwide for its correct modus operandi.

Odebrecht

Latin America did not miss out on this evolution. Owing to a situation similar to Siemens', Brazilian construction group Odebrecht is now under investigation. Its millions of dollars in bribes revealed systematic, chronic corruption which has rocked public and private structures in Latin America.

In Ecuador, Vice President Jorge Glas was involved. In Panama, 68 people have been sued on account of Odebrecht bribes, including several former ministers. In the Dominican Republic, Odebrecht admitted it paid US$92 million in bribes. In Colombia, former Deputy Minister for Transport Gabriel Garcia Morales and the former Senator Otto Bula are in jail, awaiting trial, both for offenses, which they have admitted to, of having received bribes from Odebrecht amounting to US$6.5 and $4.6 million, respectively. In Brazil, the case is part of the judicial framework known as "Lava Jato" (Operation Car Wash) which investigates the bribes of the country's main construction companies awarded works' contracts by the state petroleum giant Petrobras.

However, the example involving the greatest political

"Odebrecht and its millions of dollars in bribes revealed systematic, chronic corruption which has rocked public and private structures in Latin America"

prominence in the Odebrecht case is that of Peru where the last four presidents have been investigated, accused or sentenced to prison. In Peru, after the Brazilian corruption scandal, it has become more important to bear in mind the compliance and Good Corporate Governance guidelines in companies, all the more so if it can be investigated and subject to sanction by U.S. courts.

As part of its cooperation agreement with the U.S. Justice department, Odebrecht itself is involved in the implementation of compliance initiatives. It thus agreed to maintain an independent monitor for three years which will ensure the company implements and maintains an appropriate compliance program. It will also deploy a specialized, independent company which will make sure Odebrecht reduces the risk of committing any offenses contemplated in the FCPA. Odebrecht must implement internal control measures which are effective, fair and efficient. To ensure its effectiveness, the compliance program must be as – or even more - important as the sales' strategies. This is why qualified staff, an allocated annual budget and unrestricted access to all company information will be required.

The consequences not only affected Odebrecht, entrepreneurs and politicians, but also companies with direct or indirect relations. The Peruvian construction company Graña y Montero, which also has operations in Chile and Colombia, saw itself involved in six investment projects associated with the company Odebrecht. It has not only suffered an impact in criminal terms – its main executives were arrested and are on trial – but also during the course of 14 months its value – the highest of any constructor in Peru – has fallen by 73%.

The economic and reputational blow to Graña y Montero has led it to start a major drive to restructure its management system by setting up a compliance system and a sustainability committee. The top managers have approved corporate policies and the necessary measures to provide confidential channels for lodging complaints and to have a governance committee. What's more, the company reorganized its management bodies by designating areas dedicated exclusively to dealing with the Odebrecht effect. Furthermore, its ethics code and code of conduct were strengthened and a stricter due diligence process has been put in place.

Graña y Montero, with its new compliance policies, in 2017 achieved 500 hours/person of training in its ethics code, code of conduct and the use

"There are lessons to be learned from these major corruption cases, and they have impacted the evaluation and development of compliance. Nowadays, compliance is not only considered a way to prevent criminal or administrative liability, but also a means to implement more transparent management models"

of its ethical channel and 400 hours/person of training in anti-corruption matters. There have been 70 work sessions of the Risks, Compliance and Sustainability Committee, and it has implemented risk evaluation for companies with which it could set up joint operations.

There are lessons to be learned from these major corruption cases impacting the evaluation and development of compliance. It is not just about preventing criminal or administrative liability, but rather implementing more transparent management models as a tool for recovering institutional reputation.

4. COMPLIANCE AND REPUTATION

Although it is hard to measure the effectiveness of the compliance programs, their implementation is very often rated by how far they can keep companies from regulatory and legal problems. However, it is increasingly believed the main purpose of compliance is to minimize the possibility of events that tarnish a company's reputation. This is why the role of compliance officer and his/her work in coordination with the chief executive and the person responsible for the communications area is regarded as increasingly important.

Experts in the Risk Assistance Network Exchange (RANE) analyzed a recent poll by the consultancy agency Aite which indicated 68% of compliance professionals in financial services' companies worldwide say protecting the company's reputation is their priority, arguing investment in this area generates positive returns in terms of institutional reputation.[15] The main points that underpin this statement are the following:

- **Compliance is an investment:** The problem with positive reputation deriving from compliance is people usually find out about these programs when something is wrong. However, according to Dow Jones[16] consultant Jim Lord, a good compliance program may prevent the need for repairing a company's image or reputation.

- **Good reputation derives from the process, not the result:** As we mentioned above, compliance is made up of a series of tools and procedures intended to comply with standards and work in a more effective,

[15] https://www.dowjones.com/insight/how-strong-*compliance*-can-produce-positive-reputation/

[16] Jim Lord, Partner, Inman Flynn, P.C. Consultant to Dow Jones. https://www.dowjones.com/insight/how-strong-*compliance*-can-produce-positive-reputati

"A good compliance program may actually prevent the need for repairing a company's image or reputation"

honest manner. This is why it is important to focus on a compliance program that convinces stakeholders it is a priority for the company. Lord stresses it is not enough to have a sound compliance program; it is important to introduce a culture of compliance throughout the company to see the results.

- **Convey compliance:** To ensure compliance practices impact corporate reputation, the company will have to impress several audiences. Society should know the company for its good practices, so in the event of a scandal, the first thing that comes to mind is doubt. To achieve this, a culture of compliance must be disseminated that can be incorporated in the mission and vision of the company as a priority.

- **Know your audience:** According to Ann Walker Marchant, the founder and CEO of The Walker Marchant Group, the majority of entrepreneurs or investors wish to do business with honest, transparent and law-abiding companies. A good compliance program can be shown to the public as proof of its honesty and transparency. Furthermore, damage caused by malpractice can generally be counteracted if the company takes the steps required to tackle the problem publicly. So, these attributes – those of transparency and honesty – become part of the company's identity. For investors, an institution that carries out its business ethically and responsibly is one in which it is worth investing. For regulators, the company's reputation is also a very important issue as it influences the supervisory procedures.[17]

However, it is important to introduce a true compliance culture. Ethics and integrity must form part of the organization's culture and be present in its history, customs and behavior in accepted fashion. To ensure this culture becomes a company asset, it is necessary, besides having policies and procedures, for this to be clear in the company's identity statements.

[17] https://www.dowjones.com/insight/how-strong-*compliance*-can-produce-positive-reputation/

"Ethics and integrity must form part of the organization's culture and be present in its history, customs and behavior in accepted fashion"

5. BY WAY OF CONCLUSION: THE CHALLENGES AND TENDENCIES OF COMPLIANCE

From the outset, the evolution of compliance has been characterized by corruption scandals. It was these crises which led companies to implement new legal obligations and regulations. The compliance programs were originally implemented to be exempted from liability and in almost all cases owing to external legal obligations. However, with the passage of time, and in particular after those cases in which companies suffered scandals, both the compliance programs and the codes of conduct, as well as the introduction of compliance officers, have become mandatory. They have even taken on a new purpose different from the original one: to recover institutional reputation.

It is necessary to identify the challenges and risks then turn them into opportunities. Compliance becomes an opportunity for companies to be managed in a more transparent, efficient manner. It is an area that is quickly moving forward and gaining ground.

Matthias Kleinhempel, a fulltime professor at the Governability and Transparency Centre of the IAE of the Austral University,[18] points out challenges compliance still has to overcome, as its effectiveness is very hard or even impossible to measure. He raises two main challenges, particularly in the case of transnationals. The first is related with the difficulty of mapping the compliance and ethical risk.

We need to have an effective risk map as this is what allows us to assign resources correctly and is a good indicator on senior management's progress in adopting codes. This is crucial, as whether someone commits illicit acts or not depends on behavior and psychological and cultural aspects.

The second major challenge relates to compliance by third parties or suppliers. Investigation of third-party value chains is complicated, as well as that related to outsourced activities. According to Kleinhempel, interviews with compliance officers indicated 70% were unaware of what is happening in supply chains. Due diligence needs to be boosted

[18] https://www.youtube.com/watch?v=npBL3zFVHnE

"We need to have an effective risk map, as this is what allows us to assign resources correctly, and it is a good indicator on senior management's progress in adopting codes"

and routine monitoring is needed for supply chains. Training in communications and transparency can also be put into effect, as well as determining termination clauses in the event of ethics violations.

By contrast, there are some observable aspects which need to be highlighted. One of these relates to the importance compliance officers are gradually acquiring in Latin American countries, particularly in South America. Now, according to Kleinhempel, 30% report directly to the CEO or to the board and, of these, almost 50% take part in the strategic company decisions and can bring about changes to the business model when they regard it as risky. Around 50% of them meet up periodically with the CEO and 60% with the board every quarter.

Kleinhempel goes on to say we can find two major trends in compliance. The first is the creation of a true ethics-based compliance culture. It doesn't matter how good the procedures implemented are, as they will prove ineffective if we fail to create a true "compliance culture" right from the company's executive levels to the general workforce.

Because there are ever fewer incentives guided by law, compliance is being based more on principles than rules. Rather than complying with standards and regulations, it is a matter of how companies make good decisions in difficult situations. Hence, decision-making, ethical principles and leadership have become very relevant. The major scandals of recent years have mainly occurred due to problems and failings in ethical leadership. This is why compliance programs must have as their target audience those executives and employees who need guidance and assistance in cases of temptation or even extortion. The board's commitment is crucial as they will decide the company's culture.

Compliance training has proven ineffective and dull. Education should be increasingly provided when facing dilemmas and situations which are hard to deal with. These circumstances assume companies work in a gray area, that they have problems which are hard to sort out and there is no right solution. Companies must go over and above compliance and look at human behavior to comply with their prevention function.

A second major tendency is related to technology. Many companies get delayed and bogged down by the vast amount of data. Approximately 80% of compliance officers believe technology has a major impact on compliance. Big Data and Data Analytics, for example, allow better targeting, better risk monitoring and

"Compliance started off with a legal approach. Subsequently, ethics were gradually incorporated and, finally, today a behavioral-based approach is used"

better identification of executives' needs to provide them with an education more in tune with their activities.

The digital revolution is imposing new forms of interrelating inside and outside the company. An increasing number of people work on the cloud, on digital platforms which get rid of the bureaucracy and management layers. An increasing number of companies relocate teams or business units to make them more flexible and free them up from the rigidity of large corporations. Furthermore, new risks and responsibilities also arise, inherent in the use of algorithms in data analytics and the use of artificial intelligence. Ethical and legal challenges undoubtedly arise which are directly incumbent upon corporate compliance, over and above data protection. It is vital for the fields of Risks and Compliance to start managing, within their fields of competence, this cyberworld with which they will have to deal.

Compliance started off with a legal approach—at the time this seemed ineffective but it afforded tools and a framework for better management and an improvement in companies' reputation. Subsequently, ethics were gradually incorporated and, finally, today a behavioral-based approach is used. The programs are seldom called compliance, and are starting to get renamed as they begin to focus more on integrity and ethics rather than solely legal aspects.

Authors

Gonzalo Carranza is Senior Director of LLORENTE & CUENCA in Peru. Gonzalo is a journalist specializing in economics. He holds a master's degree in business administration from the Adolfo Ibanez University School of Management while based in Peru. Prior to joining LL&C, he was an editor for the economy and business sections of El Comercio, Peru's most important newspaper. He also worked as a press officer for BCP; an editorial manager of Editora Planeta Peru; a general editor of Revista G de Gestión, of the El Comercio Group; and as a senior analyst of Semana Económica.

gcarranza@llorenteycuenca.com

Francisco Hevia is Senior Director of the Corporate Communications Area in Spain at LLORENTE & CUENCA. He has a bachelor's degree in advertising and public relations from the Complutense University of Madrid and more than 20 years of experience in communications in both consultancy and corporate settings. He was a part of the LLORENTE & CUENCA team between 2000 and 2007, leaving to join the Siro Group as communications and human resources manager. For the past three years, he was communications and CSR manager at Calidad Pascual. At present, he is an independent director of the José María Group and chairman of the Spanish Association of Corporate Social Responsibility Directors (Asociación Española de Directivos de Responsabilidad Empresarial – DIRSE).

phevia@llorenteycuenca.com

Denise Ledgard is public policy and corporate affairs expert. A public policy, public management and anti-corruption expert and consultant, she holds a Master of Laws degree from the University of London (Chevening Scholarship) and a Master of Public Policy from the University of California Berkeley's Goldman School of Public Policy (Fulbright Scholar); She is a public policy and public management lecturer at PUCP and, until December 2017, was the chief of staff for Peru's Ministry of Culture. She has held several public positions, such as executive Director of the *Lugar de la Memoria, la Tolerancia y la Inclusión Social*; policy reform coordinator for the Presidency of the Council of Ministers of Peru; Deputy ombudsman of public administration for the peruvian Ombudsman´s office and special legal *attaché* for the Embassy of Peru in Japan for the extradition case of former President Fujimori.

dledgard@gmail.com

LLORENTE & CUENCA

CORPORATE MANAGEMENT

José Antonio Llorente
Founding Partner and Chairman
jallorente@llorenteycuenca.com

Enrique González
Partner and CFO
egonzalez@llorenteycuenca.com

Adolfo Corujo
Partner and Chief Talent and Innovation Officer
acorujo@llorenteycuenca.com

Carmen Gómez Menor
Corporate Director
cgomez@llorenteycuenca.com

Juan Pablo Ocaña
Legal & Compliance Director
jpocana@llorenteycuenca.com

MANAGEMENT - AMERICAs

Alejandro Romero
Partner and CEO Americas
aromero@llorenteycuenca.com

Luisa García
Partner and COO Latin America
lgarcia@llorenteycuenca.com

José Luis Di Girolamo
Partner and CFO Latin America
jldgirolamo@llorenteycuenca.com

Antonieta Mendoza de López
Vice President of Advocacy LatAm
amendozalopez@llorenteycuenca.com

TALENT MANAGEMENT

Daniel Moreno
Chief Talent Officer for Europe
dmoreno@llorenteycuenca.com

Karla Rogel
Chief Talent Officer for Northern Region
krogel@llorenteycuenca.com

Marjorie Barrientos
Chief Talent Officer for Andean Region
mbarrientos@llorenteycuenca.com

Laureana Navarro
Chief Talent Officer for Southern Region
lnavarro@llorenteycuenca.com

SPAIN AND PORTUGAL

Arturo Pinedo
Partner and Managing Director
apinedo@llorenteycuenca.com

Goyo Panadero
Partner and Managing Director
gpanadero@llorenteycuenca.com

Barcelona

María Cura
Partner and Managing Director
mcura@llorenteycuenca.com

Óscar Iniesta
Partner and Managing Director of Arenalia
oiniesta@llorenteycuenca.com

Muntaner, 240-242, 1º-1ª
08021 Barcelona
Tel. +34 93 217 22 17
Tel. Arenalia +34 660 201 020

Madrid

Joan Navarro
Partner and Vice-president of Public Affairs
jnavarro@llorenteycuenca.com

Amalio Moratalla
Partner and Senior Director of Sport and Business Strategy
amoratalla@llorenteycuenca.com

Iván Pino
Partner and Senior Director of Digital
ipino@llorenteycuenca.com

Claudio Vallejo
Senior Director Latam Desk
cvallejo@llorenteycuenca.com

Ana Folgueira
Managing Director Impossible Tellers
ana@impossibletellers.com
Tel. +34 914 384 295

Lagasca, 88 - planta 3
28001 Madrid
Tel. +34 91 563 77 22

Cink

Sergio Cortés
Partner. Founder and Chairman
scortes@cink.es

Muntaner, 240, 1º-1ª
08021 Barcelona
Tel. +34 93 348 84 28

Lisbon

Tiago Vidal
Partner and Managing Director
tvidal@llorenteycuenca.com

Avenida da Liberdade nº225, 5º Esq.
1250-142 Lisbon
Tel. + 351 21 923 97 00

UNITED STATES

Erich de la Fuente
Partner and CEO
edelafuente@llorenteycuenca.com

Miami

Erich de la Fuente
edelafuente@llorenteycuenca.com

600 Brickell Ave.
Suite 2020
Miami, FL 33131
Tel. +1 786 590 1000

New York City

Gerard Guiu
Director of International Business Development
gguiu@llorenteycuenca.com

Abernathy MacGregor
277 Park Avenue, 39th Floor
New York, NY 10172
Tel. +1 212 371 5999 (ext. 374)

Washington, DC

Ana Gamonal
Director
agamonal@llorenteycuenca.com

10705 Rosehaven Street
Fairfax, VA 22030
Washington, DC
Tel. +1 703 505 4211

MEXICO, CENTRAL AMERICA AND CARIBBEAN

Javier Rosado
Partner and Managing Director North Region
jrosado@llorenteycuenca.com

Mexico City

Juan Arteaga
Managing Director
jarteaga@llorenteycuenca.com

Rogelio Blanco
Managing Director
rblanco@llorenteycuenca.com

Bernardo Quintana Kawage
Non-Executive Chairman
bquintanak@llorenteycuenca.com

Av. Paseo de la Reforma 412, Piso 14,
Col. Juárez, Del. Cuauhtémoc
CP 06600, Mexico City
Tel. +52 55 5257 1084

Havana

Pau Solanilla
psolanilla@llorenteycuenca.com

Sortis Business Tower, piso 9
Calle 57, Obarrio - Panamá
Tel. +507 206 5200

Panama City

Pau Solanilla
Managing Director
psolanilla@llorenteycuenca.com

Sortis Business Tower, piso 9
Calle 57, Obarrio - Panamá
Tel. +507 206 5200

Santo Domingo

Iban Campo
Managing Director
icampo@llorenteycuenca.com

Av. Abraham Lincoln 1069
Torre Ejecutiva Sonora, planta 7
Tel. +1 809 6161975

ANDES' REGION

Bogota

María Esteve
Partner and Managing Director
mesteve@llorenteycuenca.com

Av. Calle 82 # 9-65 Piso 4
Bogotá D.C. – Colombia
Tel: +57 1 7438000

Lima

Luis Miguel Peña
Partner and Senior Director
lmpena@llorenteycuenca.com

Av. Andrés Reyes 420, piso 7
San Isidro
Tel. +51 1 2229491

Quito

Carlos Llanos
Managing Director
cllanos@llorenteycuenca.com

Avda. 12 de Octubre N24-528 y Cordero – Edificio World Trade Center – Torre B - piso 11
Tel. +593 2 2565820

Santiago de Chile

Constanza Téllez
Managing Director
ctellez@llorenteycuenca.com

Francisco Aylwin
Non-Executive Chairman
faylwin@llorenteycuenca.com

Magdalena 140, Oficina 1801.
Las Condes.
Tel. +56 22 207 32 00

SOUTH AMERICA

Buenos Aires

Mariano Vila
Managing Director
mvila@llorenteycuenca.com

Av. Corrientes 222, piso 8. C1043AAP
Tel. +54 11 5556 0700

Rio de Janeiro

Cleber Martins
clebermartins@llorenteycuenca.com

Ladeira da Glória, 26
Estúdio 244 e 246 - Glória
Rio de Janeiro - RJ
Tel. +55 21 3797 6400

Sao Paulo

Cleber Martins
Managing Director
clebermartins@llorenteycuenca.com

Juan Carlos Gozzer
Regional Innovation Officer
jcgozzer@llorenteycuenca.com

Rua Oscar Freire, 379, Cj 111,
Cerqueira César SP - 01426-001
Tel. +55 11 3060 3390

d+i desarrollando ideas
LLORENTE & CUENCA

Desarrollando Ideas es el Centro de Liderazgo a través del Conocimiento de LLORENTE & CUENCA.

Porque asistimos a un nuevo guión macroeconómico y social. Y la comunicación no queda atrás. Avanza.

Desarrollando Ideas es una combinación global de relación e intercambio de conocimiento que identifica, enfoca y transmite los nuevos paradigmas de la sociedad y tendencias de comunicación, desde un posicionamiento independiente.

Porque la realidad no es blanca o negra existe **Desarrollando Ideas.**

www.desarrollando-ideas.com
www.revista-uno.com

/amo
strategic advisors

AMO is the leading global partnership of corporate and financial communications consultancies.

Our best-in-class approach brings together local-market leaders with unrivalled knowledge of stakeholder perceptions, financial markets and cross-border transactions in the key financial centers of Europe, Asia and the Americas.

Providing sophisticated communications counsel for reputation management, M&A and capital market transactions, media relations, investor relations and corporate crises, our partner firms have established relationships with many S&P 500, FTSE 100, SMI, CAC 40, IBEX 35 and DAX 30 companies.

www.amo-global.com