

Are the Corruption Risks Changing in Latin America?

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In June of 2013, Brazil hosted the Confederations Cup, one of international soccer's largest tournaments. It was to be an exciting prelude and major test run in preparation for next year's World Cup. With such excitement and anticipation, it was expected that the streets of Brazil's major cities would be filled with large crowds of loud, determined, and animated fans. In fact, that is precisely what happened, with estimates putting the size of the crowds in some locations and on some days above one million people. However, these were not marches in support of Brazil's soccer team, but rather an exhibition of frustration against corruption. Many Brazilians had had enough.

Why should these protests matter to international investors? While the verdict is still out on whether the events in Brazil represent a major cultural and institutional change, we have already begun to see significant factors contribute to how corruption is perceived in the region and how investors need to respond in order to protect themselves.

Enforcement actions by United States authorities arising from alleged activities in the region is on the rise, Embraer and Wal-Mart being the most publicly known examples. The United States is not alone, though. This year, Brazil passed the Clean Companies Act; PEMEX, Mexico's National Oil Company, initiated a civil lawsuit in New York seeking monetary damages from previous suppliers that engaged in improper activity; and the Argentine government responded forcefully in response to Ralph Lauren's settlement in the United States for bribery of customs officials.

What should investors do in response to the changing landscape? Foreign investors in the region should be vigilant about not only potential United States anti-corruption laws, but also those of the countries in which they operate. Depending on the economic sector, special attention may also need to be given to sector-specific regulations or state-owned enterprise policies and procedures mandated by local law. In short, investors need an effective anti-corruption compliance program that can prevent, detect, and respond to potential improper activity under all applicable laws and regulations.

Investors can look to the emerging global standard for an effective anti-corruption compliance program to measure whether or not they are taking all the appropriate steps to protect against risks in Latin America. Although not the only requirements of an effective compliance program, investors should at a minimum ensure that they have conducted an individualized risk assessment and based their compliance program on the assessment findings; that they have a strong third-party due diligence process; contractual commitments; and payment controls; that a strong travel, gifts, and entertainment due diligence process and controls apparatus is in place; and that pre-acquisition due diligence and post-acquisition integration protocols are a core component of any such transactions in the region. Without these basics, investors are putting themselves at significant risk exposure in a region where the anti-corruption focus is high.