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IBA AND ICC ANTI-CORRUPTION CONFERENCE

LatAm companies should up compliance efforts, say IBA panellists in Mexico

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Successful compliance programmes might start at the top, but if the message fails to reach the bottom, companies will still land themselves in trouble, said panellists at the IBA and ICC Anti-Corruption Conference.

To implement a thorough compliance programme, companies – and their lawyers – should ensure that even the smallest local units understand why these measures are necessary, speakers told an audience in Mexico City on 12 May. The panel was dedicated to the role law firms play in the drafting, implementation and execution of anti-corruption compliance programmes.

The session saw speakers from Mexico, Bolivia, Brazil, Chile, Colombia and the US exchange views on their countries' approaches to compliance. Panellists said that anti-corruption compliance is in its infancy in most of Latin America, and that a lack of understanding is hindering progress.

"We've seen cases where the subsidiary in Brazil doesn't understand it in the same way. In some branches of the company throughout the country this might be even worse, and so it is very important to engage local leadership or it will not work," said Bruno Maeda, of Brazil's Trench, Rossi e Watanabe Advogados (associated with Baker & McKenzie).

Resistance to compliance programmes, especially those that address foreign extraterritorial laws, can be found everywhere, said Marcos Ríos, of Carey in Chile.

It's often down to "the widespread 'nobody else does it' argument," Ríos said. "The resistance of … sales people who are saying: 'why am I including these different clauses in my contract, no one else is doing it'."

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Many employees fail to understand where the rules and systems originate, and in certain jurisdictions, employees would be “crazy to follow the official system”. When confronted with compliance programmes aimed at preventing violations of foreign laws, lawyers have seen local subsidiaries create and promote parallel systems to circumvent the company-wide rules.

Ríos said cultural differences are a significant challenge for multinational companies building compliance programmes.

“Culture means what your employees have been used to seeing as normal, and what everyone else does in the country,” he said, adding that in some countries, there is a “natural resistance” to what are considered Anglo or US systems.

To improve understanding, laywers recommended using examples of prior corruption cases that local companies can identify with in training sessions.

“You can explain the FCPA, the DoJ, the whatever XYZ – these are only letters for the people receiving the training. These are people working on the ground, in remote areas, who really just take the training to check the box,” said José Alejandro Torres, of Posse Herrera Ruiz in Colombia.

“You need to get the message through, and the way to get the message through is with real-life examples. Not the Siemens case in far-away Europe, but local specific cases of corruption that are coming out now, and getting proper press coverage. If you don’t they will sit there and remember nothing after leaving the training.”

Here too, Ríos stressed the importance of identifying potential cultural differences and working them into the training, which should be “smoother than what you would do in an Anglo or US type of culture,” he said.