

ANNUAL REVIEW

Corporate fraud & corruption

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Argentina ■

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Raúl Saccani has almost 20 years of international experience in forensic auditing, accounting fraud investigation and prevention of money laundering and anti-corruption. He has provided expert testimony at the World Bank (ICSID) and the ICC international arbitration. He is the president of the Anticorruption Commission at the Economic Science Professional's Council in Buenos Aires. He is the author of the Forensic Audit Treatise (Thomson Reuters, 2012), is fellow of the Governance and Transparency Centre at IAE Business School and investigator at the UDESA Anticorruption Centre.

■ **Q. To what extent are boards and senior executives in Argentina taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?**

SACCANI: In a recent survey from the IAE Business School's Centre for Governance and Transparency, more than 200 Latin-American compliance officers were asked about the most important obstacles they struggle with. The biggest obstacle reported is organisational culture, closely followed by the incentive system and the lack of an adequate 'tone at the top'. As long as these complex issues are not addressed and the necessary changes are not initiated, the success sought by compliance officers will be limited. Such a background would lead us to believe that boards and senior executives are unlikely to take proactive steps to reduce instances of fraud and corruption. However, this may vary from company to company, depending on the risks they are facing and, most likely, whether the organisation has suffered a negative reputational impact due to sanctions and corruption issues in the past.



■ **Q. Have there been any significant legal and regulatory developments relevant to corporate fraud and corruption in Argentina over the past 12-18 months?**

SACCANI: We read about new scandals in Argentina on a daily basis. However, it seems that the current political will is leading to a cleaner, more transparent and accountable government, one which is run according to ‘best practices’. Additionally, the country has a strategic interest in joining the OECD. As a result, in late 2017, the Argentine Congress passed law 27,401 which criminalises corporate bribery and corruption and imposes requirements for compliance programmes, setting out new rules for reaching settlements with the authorities in bribery investigations. Notably, the offences included do not have a minimum threshold, making legal persons liable regardless of the significance of the prohibited transaction. Penalties include fines ranging from two to five times the ‘undue’ benefit that was obtained or that could have been obtained. Additionally, legal entities under investigation for breaching this law may enter into collaboration agreements with the authorities seeking a reduction in penalties.

■ **Q. When suspicions of fraud or corruption arise within a firm, what steps should be taken to evaluate and resolve the potential problem?**

SACCANI: Whether internal or external, successful or thwarted, a fraudulent act compels an organisation to address a number of critical questions. Who is involved? What has the scheme cost us? How long has it been going on? An organisation’s analytics-driven fraud fighting

approach, as a critical component of fraud defence, can help address these questions. The use of technology to monitor for potential risks, as well as analytics to identify new emerging threats, may position the company to better mitigate the blind spots in its fraud defences and address the risks of being blindsided financially, operationally and legally. In the face of a multijurisdictional investigation, the specific requirements of key elements should be analysed from a legal perspective, such as data preservation and collection, employee interviews, fact analysis and reporting, disclosure and settlements. After assessing the risks involved in the allegation, a strict definition of the investigation scope is recommended, in order to avoid potential pitfalls for collecting, reviewing and producing relevant documents.

■ **Q. Do you believe companies are paying enough attention to employee awareness, such as training staff to identify and report potential fraud and misconduct?**

SACCANI: Education and training represent an important line of defence against corruption. The underlying objective is to help everyone understand their individual roles under the integrity programme and to guide them in making the right decisions when confronted with risky situations. However, training may not be a top priority for all companies. One of the minimum mandatory components of the integrity programme, according to law 27,401, is periodic training on its contents for directors, administrators and employees. To be effective, training activities should not only focus on the key laws and regulations, but should also provide attendants with a chance to confront real world



situations. Ethical dilemmas and case studies can help employees adopt the right behaviour when challenged by situations during their daily routine.

■ **Q. How has the renewed focus on encouraging and protecting whistleblowers changed the way companies manage and respond to reports of potential wrongdoing?**

SACCANI: The recently published Association of Certified Fraud Examiners (ACFE) ‘2018 Report to the Nations’ takes a view on how occupational fraud is initially detected. Results from Latin America and the Caribbean show that, by far, tips are the most successful method of detecting wrongdoing. This result is consistent with previous surveys conducted by the ACFE. However, hotlines are not the most common anti-fraud measure in place in the region. According to the new law on corporate criminal liability enacted in Argentina, the suggested components of the integrity programme include both communication channels being visibly available to members of the entity and to third parties for reporting any irregularities, and clear policies to avoid retaliation against whistleblowers. Since March 2018, we have seen a spike in interest from local companies to learn about how to implement these whistleblowing tools.

■ **Q. Could you outline the main fraud and corruption risks that can emerge from third-party relationships? In your opinion, do firms pay sufficient attention to due diligence at the outset of a new business relationship?**

SACCANI: There are many potential issues which businesses need to understand and monitor in relation to their third-party relationships, including business integrity and corruption issues, alleged human rights violations, product safety and security and licensing and permit irregularities, among others. Operating in emerging markets may lead to increased exposure to compliance risks, particularly when third parties – or their principals – interact with local and national government officials. Article 2 of Law 27,401 states that legal persons are liable for the corruption related crimes committed, directly or indirectly, with their intervention or in their name, interest or benefit. The individual offenders may be employees or third parties, even unauthorised third parties, provided that the legal person ratified the act, even tacitly. Therefore, the statute creates a need for robust due diligence, monitoring and management programmes over business partners and other third parties.

■ **Q. What advice can you offer to companies on implementing and maintaining a robust fraud and corruption risk management process, with appropriate internal controls?**

SACCANI: A compliance programme, according to the new law, must be appropriate to the risks, size and economic capacity of the entity. A dynamic autoregulation rather functions as a consequence of a periodic risk analysis. So, where to start? Senior management awareness of key compliance issues and their visible and unequivocal support are key to the success of the integrity programme. The compliance officer should be aware of the regulators’ expectations,



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together with subject matter expertise and deep business knowledge. He or she works as a kind of compliance ‘trend spotter’ for senior management. However, awareness alone is not enough. The next step is cultural change. This starts with a sincere ‘tone at the top’, along with the implementation of an incentive system in a manner consistent with corporate values. It is not an easy task, but we must leave behind old beliefs and obsolete systems, and we must

communicate the changes in a credible way, via our own example. ■

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