

Challenges in the implementation of Internal Complaint Procedures

The relevance of internal complaint procedures, as an essential component of compliance programs, has become evident in recent years because of its proven usefulness as an effective tool to facilitate the timely detection of events or practices that violate anti-corruption regulations or prevent money laundering, as well as their subsequent research within the business organization. According to Report to the Nations 2020 of the Association of Certified Fraud Examiners ("ACFE"), internal complaints are the most common fraud detection mechanism. Along the same lines, according to the results of the Global Survey on Economic Crimes and Fraud 2018 prepared by *PricewaterhouseCoopers* in Peru, 23% of economic crimes were discovered through the use of reporting procedures.

It is precisely this preventive approach based on timely detection that allows the organization to manage risks and potential consequences in advance, reasonably

controlling the implications in legal, economic or reputational terms that could arise from the situations detected. Therefore, the compliance divisions must verify whether the internal complaint channel implemented in the company complies with the required standards of effectiveness.

In this regard, the guidelines established by the Department of Justice of the United States of America (DOJ) for the evaluation of compliance programs are useful, including the promotion by organizations of an adequate working environment for the making of complaints through objectively verifiable actions, such as allowing anonymous complaints, guaranteeing a policy of non-reaction and protection of whistle blowers, and ensure accessibility of the ethical channel or complaints.

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In this regard, when assessing the appropriate implementation of this component, the following corporate compliance requirements must be considered from a general perspective: (i) regularly analyze the effectiveness of the complaint procedures (e.g. whether channels are being used, dissemination and training of employees and third parties of the complaint procedure); (ii) the proper conduct of investigations that could be initiated on the basis of the reported facts, with defined roles, rules and basic guarantees (e.g. which persons or areas are in charge of the investigation, ensuring the independence, objectivity and documentation of the procedure); and (iii) the capacity of the organization to respond to the identification of possible gaps or weaknesses in the complaints or investigation procedure.

These evaluation criteria are certainly not unrelated to our reality, if we consider that the Regulation of Law No. 30424 provides, unequivocally based on the Evaluation Guide of the DOJ, a comprehensive catalog of parameters that the Superintendence of the Stock Market (SMV) must verify for purposes of the technical report that the Attorney General's Office requires to determine whether the compliance program is duly implemented in the company.

News

On September 11, 2020, the French Anti-Corruption Agency ("AFA") published a Practical Guide on Corporate Policies on Gifts and Hospitality, establishing recommendations for the development and implementation of this policy by companies or entities.

Source: French Anti-Corruption Agency (AFA)



The U.S. Commodity Futures Trading Commission ("CFTC") issued a Guide for the Assessment of the Suitability of Corporate Compliance Programs.

Source: U.S. Commodity Futures Trading Commission ("CFTC")



In Costa Rica, Executive Decree No. 42399-MEIC-MJP, published the Regulations to Title II of the Law on Liability of Legal Entities for Domestic Bribery, Transnational Bribery and Other Crimes, Law No. 9699, establishing the components of the Crime Prevention Models.

Source: Official Gazette of Costa Rica



In order to improve the efficiency and effectiveness of the Whistleblower Protection Program, the U.S. Securities and Exchange Commission ("SEC") amended the rules for filing a complaint under Section 21F of the Securities Exchange Act of 1934 and published a guide regarding the process for determining award amounts for eligible whistleblowers.

Source: The U.S. Securities and Exchange Commission (SEC)



The Financial Action Task Force (FATF), published a document identifying the main flagship networks on money laundering and financing of terrorism, based on more than 100 case studies collected by members of the Group's Global Network, which aims to assist different sectors in detecting whether certain virtual assets are being used for criminal activities.

Source: Financial Action Task Force (FATF)



According to an interim report published by the High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI) convened by the United Nations (UN), 10% of global GDP is in offshore financial assets, while money laundering is estimated to be around US\$ 1.6 trillion, or 2.7% of global GDP.

Source: High Level Panel on International Financial Accountability, Transparency and Integrity (FACTI)



Through the publication of Resolution SBS No. 2317-2020, the Regulations on Infringements and Sanctions for the Prevention of Money Laundering and the Financing of Terrorism were amended to allow for the imposition of non-pecuniary sanctions and corrective measures in administrative sanctioning procedures of the Financial Intelligence Unit (UIF-Peru).

Source: The Official Gazette El Peruano



Resources

Transparency International published a tool to assess the compliance of local regulations with the European Union (EU) Directive on whistleblower protection and best practices.

Source: Transparency International



Together with the Institute of Chartered Accountants of England and Wales ("ICAEW"), the International Federation of Accountants (IFAC) launched the first installment of its anti-money laundering educational series, "Anti-Money Laundering: The Basics: Part 1: Introduction to Anti-Money Laundering for Professional Accountants.

Source: International Federation of Accountants (IFAC)



Others

Based on a study on the "Calculation of the size of corruption and functional misconduct in Peru" carried out by the General Comptroller of the Republic (CGR), it is estimated that the State has lost 23,297 million soles in 2019, due to corruption activities and functional misconduct.

Source: General Comptroller of the Republic (CGR)



Contact



José Reaño
Partner
jreano@estudiorodrigo.com



José Luis Medina
Associate
jmedina@estudiorodrigo.com



Sebastián Elías
Associate
selias@estudiorodrigo.com



Micaela Torres
Associate
mtorres@estudiorodrigo.com



Laura Zúñiga
Associate
lzuniga@estudiorodrigo.com
