

# Strategies for Overcoming Corruption

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## S.A.C.I Falabella in a few words



- A Company that is regional to **Latin America**
- Has become a **multilatina** corporation (Argentina, Brazil, Chile, Colombia, Mexico, Peru and Uruguay)
- Our headquarters are in **Santiago, Chile**
- Our controlling equity is largely in the hands of **Chilean beneficiary owners**
- The largest corporation traded in the Santiago **Stock Exchange**, as measured by market cap
- Which is currently in excess of **23 billion dollars**



## S.A.C.I Falabella in a few words



- The Company has been around for **125 years**
- It grew out of a **family-owned** tailor shop
- **We currently operate:**
  - Department stores
  - Home improvement stores
  - Supermarkets
  - Financial services companies
  - Banks
  - Travel agencies
  - Insurance brokers
  - Insurance companies
  - Shopping malls
  - Other comercial real estate



## S.A.C.I Falabella in a few words



- Consolidated revenues totaled **US\$ 12.8 billion** in 2016 and net income was **US\$ 910 million** for the same period
- Our companies have **107,000** direct employees total
- Our investment plan for the 2017-2020 period is of **4 billion dollars**



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I will try to do **two** things today:

- Provide a perspective on the **impact that new rules and regulations** against corruption are having in companies in Latín América
- Suggest what further steps **could be explored** to continue making progress



The **systematic** fight against corruption is **fairly recent**





The **Inter-American Convention Against Corruption** was only adopted in **1996**. Almost all of the Latin American countries both signed and ratified it between 1996 and 2004

The **OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions** was adopted in 1997 and it has been further adopted by eight non-OECD countries, of which remarkably four are Latin American: Argentina, Brasil, Colombia and Costa Rica



Virtually all countries in Latin América have started **adapting their laws** to fullfill the commitments undertaken through the ratification of these conventions



These adaptations have not consisted, for the most part, in the **criminalization of bribery**, which has been a crime for long

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There are **two salient aspects** of these recent adaptations that are truly different from what existed before

- Making legal entities (*personas jurídicas, personas ficticias* or *personas morales*), **legally capable of certain crimes**

- **Providing legal entities a safe harbor** against criminal liability if the can show **proper diligence** was exercised through the adoption and implementation of systems to prevent the occurrence of crimes



What this safe harbor to criminal liability translates into is what has come to be known as the need to have a **model for the prevention of crimes**

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A series of structural, behavioral and procedural measures and steps within companies, that when properly made results in the implementation of a system that makes it harder for a crime to occur within the organization. **Bribery is one of those crimes, but not the only one:**

Bribery of government officials (in Chile and abroad)

Money laundering

The financing of terrorism

The trade of stolen goods



There are **three main** things that need to be done for a model to be considered effective



**The appointment of an officer** in charge of the model that must:

- Have direct **access** to the CEO
- **Report** to the Board on the program at least twice a year
- Have sufficient **resources**



**The existence of a method** for the actual prevention of crimes, including: risk assessment of processes and procedures prone to the occurrence of crimes that can entail criminal liability to the entity, the existence of protocols, rules and procedures



Models for the prevention of crimes can be **certified** by independent specialized agencies



Required activities include

- Third-party intermediary due diligence
- Business partner due diligence
- Specific contractual provisions against bribery in all contracts
- Protocols for communicating with government officials
- Other



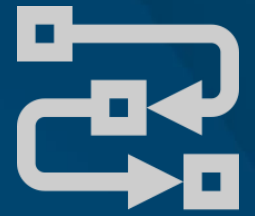
The one true merit of this safe harbor mechanism lies on the fact that it has the ability to impact **corporate culture**

**It changes not only what is done but also how it is done**



If there is one thing that companies do well and are used to manage day in and day out, **is culture**





Compliance based on culture is an internal drive **to follow process and procedure**, which is something that companies know how to do



Another positive aspect is that because it mandates specific actions to be taken, models are comparable across companies of similar sizes. Thus, the standard is to prone **to continuous improvement**



What is yet to be done and what further steps could be taken?

I believe two things would be enormously effective



- Bribes are paid because bribes are **taken**



- Institutionalization of responsibility and the safe harbor system have put things in motion within companies. **Some form of similar incentives within the public sector should go a long way**

**First potencial** course of action

Institutionalize responsibility within the public sector



I am not suggesting that the system devised for companies is mirrored entirely for the public sector. **Important differences arise immediately**, as soon as one starts to think about the problem

**Dissolution** (the ultimate price to be paid by corporations) is something we could not apply to the public sector

Lack of institutional benefit: when someone in the public sector takes a bribe, it is usually for **personal gain**



- Despite the differences, I cannot see substantive reasons why the public sector and its leaders should not be held **accountable for failing to implement systems** that will prevent corruption
- The public sector should be required by law **to take active steps** towards the prevention of corruption and incentives should be put in place to that end
- In the logic of how a plier works, the most effective way to pick an issue and not let it go away is to apply **pressure on both sides.**
- Simply banning bribery has not truly worked. **Mechanisms of active preventative obligations** seem to be working much better





**Second potential** course of action



## **Commercial or private** corruption

- Not having proper legal tools to prosecute private corruption is an extremely frustrating experience for companies
- Private bribery has not been widely criminalized because of an alleged **lack of public interest**. The traditional perspective considers it a mismanagement problem



I believe this to be a narrow and **outdated perspective**

On one hand, publicly traded corporations do indeed receive funds from the public, **either in the form of equity or debt**

On the other hand, the fight against corruption should have a broad look and go **beyond technical hair-splitting**

Control Environment Conundrum: how do you explain your associates that what can put you in jail when done with a government official **is almost impossible to prosecute** when done with a client, supplier or contractor?





- The last **20 or 25** years have been crucial and relevant progress has been made
- Simply having more laws and regulations is not truly what seems to have made a change; it has been a matter of **having the right laws, regulations and incentives**
- Requiring specific actions to be taken in the form of structure, processes and procedures **has been more effective**
- **Incentives** work when such measures are properly taken
- Companies can use their culture as a means to **preventing corruption**



It is **culture on cleanliness** that keeps the food industry running well; it is **culture on maintenance** that keeps planes in the air; it is **culture on safety** that keeps miners out of harm's way

**Culture on integrity** should be instrumental to the fight against corruption

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