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BDO GLOBAL FORENSICS:

A Q&A WITH ROLF STERN, FOUNDER AND PRESIDENT OF BDO ECUADOR

What is behind the focus on corruption issues in Latin America?

A number of recent events have brought heightened attention to corruption and fraud in Latin America. For instance, Petrobras, a state-controlled oil company and one of the largest corporations in the world, is in the midst of the biggest corruption scandal in Brazil's history. This high-profile case has not only placed a spotlight on Petrobras, but on international companies who were reported beneficiaries of the corruption as well.

Another recent corruption case involves FIFA, the international soccer association, and an investigation around collusion between officials, including those of CONMEBOL, the South American soccer confederation. Additionally, the new Argentina government has expressed concerns of potential corruption by former Kirchner government officials. Meanwhile, the impact of the recently released Panama Papers, which mark the largest offshore data leak in history, is felt worldwide as many prominent government and public officials from around the world have been tied to the leaked information. Multiple international investigations into possible financial and criminal wrongdoing are already underway. As a result of the widespread corruption in Latin America, regulators at the international and regional levels are considering reforms and cracking down on enforcement.

How are Latin American regulators addressing corruption and fraud?

Implementation and enforcement of anti-corruption and anti-fraud regulation in Latin America comes from both the top down and the bottom up, and the disparate approaches create confusion. A number of regional bodies shape the regulatory landscape in Latin America, like the Organization for Economic Co-operation and Development, as well as more local regulators in the U.K. and U.S. As recent cases illustrate, corruption investigations have spurred more international coordination, but challenges remain without a designated regulator to lead the charge, set standards for enforcement and facilitate recovery for victims.

In recent years, countries including Brazil, Chile and Colombia have issued new laws and regulations to reduce corruption and address money laundering in efforts to modernize their anti-fraud regulatory environment. But inconsistencies with when and how regulations are applied exist. For example, the Commonwealth Caribbean will sometimes choose to apply the U.K. Bribery Act, while other Caribbean countries use the anti-corruption laws issued from U.S. regulators. As changes are being made in both venues and regulations, enforcement when it comes to configuring a case can be complex, regardless of precedents.

While there is still a great deal of regulatory ground to cover in Latin America, the need for improvements to the system and more proactive measures is widely acknowledged and spurring gradual change. Countries that have historically tolerated fraud are beginning to tighten the reins on corruption and are establishing new frameworks not only to investigate, but also to provide remediation to damaged parties and increase transparency, as evidenced by recent actions taken by the Panama and Argentine governments.

What unique challenges and opportunities exist in Latin America—and Ecuador in particular—when it comes to fraud detection in the year ahead?

Operating against the backdrop of Latin America and Caribbean governance poses unique challenges. In this region, fraud is not treated as an independent issue; it's intertwined with other issues such as labor laws and protection of individual rights, requiring layers of otherwise irrelevant assessments before a fraud determination



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can be made and its consequences applied. These additional layers can complicate the story, making it more difficult to develop an effective approach to clearly identify the source of fraud, where the liability lies, the punishment and the remediation.

In Ecuador, on the other hand, there are ample resources to conduct a fraud investigation using appropriate forensic methodologies to prove that fraud has been committed. However, the system is not without problems. An ongoing challenge and source of frustration is the difficulty recovering the damages after a fraud determination has been made. Whether it's supposed to come from the fraudsters, third parties or the Justice System, victims are not being compensated on a consistent basis.

Regulators are starting to address the issue as the spotlight shifts from investigation to restitution. Finding blame and reaching a settlement is no longer enough; realized compensation is now the new standard for embezzlement cases. Increasingly, we are seeing regulators take actions to claw back benefits that individuals received to ensure those benefits are returned to the wronged parties.

What is the greatest barrier to compensation for fraud events and to addressing corruption more broadly?

In many countries in this region, the tendency is for the private sector and the government to operate autonomously. Increased cooperation between the government and private sector, and vice versa, would help close legal infrastructure and enforcement gaps, and allow for more efficiency in reaching resolutions and recovering financial losses for fraud victims. Without joint private-public programs, the system has been flooded with hurdles and inefficiencies from cumbersome procedures and a lack of necessary judicial reform—including changes and reinterpretations of laws and regulations. In contrast, in other countries, streamlined procedures have allowed for oral arguments to take place in court, helping to speed up proceedings. The increased use of qualified private fraud investigation firms and individuals, by public and private clientele, have added precision to the process and results.

Latin American countries also take divergent approaches to handling international arbitration and mediation. A small group of countries—including Nicaragua, Venezuela, Ecuador and Argentina to an extent—are resistant to what they view as Northern Hemisphere influence and consider arbitration centers in New York and the World Bank to be biased. Overall, there are disagreements about whether traditional arbitration venues are neutral, and ongoing discussions about using other ones, such as UNCITRAL, for commercial disputes.

These conflicts of interest, paired with a lack of information sharing, are the greatest hurdles to mitigating fraud and corruption. Corruption is no longer a local or national phenomenon; it's international. Laws and regulations that restrict and regulate the transfer of personal data for confidentiality and security purposes make it challenging to identify and reduce corruption. Voluntary information sharing between Latin American countries and the United States or Europe would promote more efficient and complete fraud detection and restitution. The U.S. and Panama just signed an historic information sharing deal formalizing the automatic exchange of information about U.S. citizens' bank accounts, so we're starting to see progress in this arena.

Varying international fraud detection regulations, accounting standards and information sharing laws have presented challenges for developing a cohesive case. How can BDO help bridge these gaps in fraud investigations?

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