

COMPLIANCE

Opinion Article

23 de febrero del 2023

**BOLIVIA TOWARDS THE
IMPLEMENTATION OF COMPLIANCE
IN PRIVATE COMPANIES**



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BOLIVIA TOWARDS THE IMPLEMENTATION OF COMPLIANCE IN PRIVATE COMPANIES

On February 2 of this year, the Bolivian government approved Executive Order No. 4872, regarding the “Plurinational Policy to Fight Corruption” (the “Policy”). The objective of the Policy is to strengthen the fight against corruption based on, among others: 1) digitized public management; 2) development and implementation of risk management systems; and 3) management of complaints that are measurable and comparable to obtain results of impact, to optimize the prevention mechanisms.

- **Compliance Definition**

As part of the Policy, a definition of "Compliance" is implemented for the first time in Bolivian regulations, which is understood as the set of procedures and good practices adopted by private organizations to identify and classify the operational and legal risks to which they face, and establish internal mechanisms for prevention, management, control, and reaction to them.

- **Role of the Private Sector**

The Policy seeks to prevent and strengthen the fight against corruption through the implementation of instruments in the private sector, such as compliance. There is recognition, by the government, about the need for members of society to also commit to strengthening the formation of values, and stop normalizing the problem of corruption.

- **Public Contract**

In turn, the Policy states that private companies that contract with the State must generate compliance mechanisms that incorporate control, supervision, early detection, and timely reporting measures to avoid possible acts of corruption. Likewise, the importance of working on the modification of public procurement regulations to establish anti-corruption clauses, as a preventive measure, is recognized.

- **Development of Anti-Corruption Regulations in Bolivia**

Although the concept of compliance is new in our legislation, its need and implementation have become more tangible in recent years with the enactment of Law No. 1390 on Strengthening the Fight against Corruption in 2021, which incorporates the criminal liability of juridical persons linked to corruption crimes.

The law establishes prevention mechanisms as a type of remedial sanction for companies found to be responsible for a crime of corruption. If the company had a Compliance

Program that worked to mitigate the damage caused, it could be taken into account to reduce the eventually imposed sanction.

Unlike the provisions of Law No. 1390, there is no doubt that the Policy has a preventive approach, which could influence subsequent regulatory changes that serve to incorporate the figure of compliance as a mitigating factor for the juridical person's criminal liability, as it exists in the law of other jurisdictions, for example, in the United Kingdom.

- **Looking to the Future**

There are more and more companies in Bolivia that have implemented a Compliance Program and have a Compliance Officer responsible for identifying risks and preventing them in organizations. The approval of the Policy confirms the need to develop compliance in companies, especially those that seek to contract with the State.

Likewise, it confirms the need to modify public procurement regulations and include anti-corruption clauses. In the medium term, these regulations could in turn include the need to have a Compliance Program for companies that wish to contract with the State, as is already the case in Argentina in certain contracts with the public administration.

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