

Global Investigations Review

The Practitioner's Guide to Global Investigations

Volume II: Global Investigations
around the World

Fourth Edition

Editors

Judith Seddon, Eleanor Davison, Christopher J Morvillo,
Michael Bowes QC, Luke Tolaini, Ama A Adams, Tara McGrath

2020

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Part II

Investigations Country by Country

23

Peru

Alberto Rebaza, Augusto Loli, Héctor Gadea, María Haydée Zegarra and Sergio Mattos¹

General context, key principles and hot topics

- 1 Identify the highest-profile corporate investigation under way in your country, describing and commenting on its most noteworthy aspects.

The most relevant criminal investigations relate to *Operation Car Wash*, in which Brazilian construction companies are alleged to have bribed Peruvian public officials to have infrastructure work contracts awarded at inflated prices.

- 2 Outline the legal framework for corporate liability in your country.

Statute No. 30424 (the law regulating the administrative liability of corporation), in force as of 1 January 2018 and its Regulation, Supreme Decree No. 002-2019-JUS, establish the liability of corporations for collusion crimes, domestic and transnational bribery, influence peddling, money laundering and funding of terrorism. In this sense, if an individual linked to a corporation commits any of these crimes, either in the corporation's name or on behalf of it and to its benefit, whether direct or indirect, the company could be liable for the crime autonomously. However, if the company proves that, before the crime was committed, it had an effective compliance programme in place, it could expect immunity from sanctions or a reduced sanction.

¹ Alberto Rebaza is managing partner, Augusto Loli, Héctor Gadea and María Haydée Zegarra are partners and Sergio Mattos is a senior associate at Rebaza, Alcázar & De Las Casas.

3 Which law enforcement authorities regulate corporations? How is jurisdiction between the authorities allocated? Do the authorities have policies or protocols relating to the prosecution of corporations?

Regarding the autonomous liability of corporations foreseen in Statute No. 30424, the investigation will be carried out by a prosecutor, which requires the intervention of the Stock Market Superintendence to issue a technical report regarding the effectiveness of the compliance model of the company being investigated. In the event that the compliance model is not appropriate, the prosecutor could take the company to trial, where a criminal judge could impose sanctions.

4 What grounds must the authorities have to initiate an investigation? Is a certain threshold of suspicion necessary to trigger an investigation?

The Supreme Court has recently established that to initiate a preliminary investigation, only a 'simple initial suspicion' is required, which in turn constitutes 'the least intensive degree of suspicion'.

5 How can the lawfulness or scope of a notice or subpoena from an authority be challenged in your country?

For these cases and others in which the investigated party considers that his or her rights are not being respected, or that he or she is being subjected to illegal requirements (e.g., fishing expeditions), a motion may be filed with the preliminary investigation judge, who may invalidate the subpoena or limit its scope.

6 Does your country make use of co-operative agreements giving immunity or leniency to individuals who assist or co-operate with authorities?

Originally, the Code of Criminal Procedure only regulated effective co-operation for natural persons. Depending on the relevance of the information provided, a prosecutor may request a criminal judge to exonerate or reduce the sanction.

Statute No. 30737 (passed on 11 March 2018) modified the Code of Criminal Procedure and now companies are allowed to enter into co-operative agreements with the prosecutor. In exchange for providing relevant, verifiable and timely information to clarify the facts being investigated and to prosecute the natural persons involved, the companies may obtain an exemption or reduction of the sanction.

Likewise, the clemency proceeding established in Legislative Decree No. 1034 (Law of repression of anticompetitive behaviour, passed on 24 June 2008) allows those who violate the competition rules to be exonerated from an administrative sanction or to mitigate its magnitude if they provide evidence that helps to detect and prove the existence of collusion (i.e., a cartel) and to sanction the liable parties.

7 What are the top priorities for your country's law enforcement authorities?

Authorities focus their efforts on the investigation of emblematic corruption or money laundering, which, in some cases, involve the political and business elite. For example, former presidents, political parties that participated in the last presidential campaigns and

construction companies and their directors, among others, are being investigated for the aforementioned crimes.

Cyber-related issues

8 Does your country regulate cybersecurity? Describe the approach of local law enforcement authorities to cybersecurity-related failings.

The National Cybersecurity Policy of 2017 is applicable to public administration entities. The main aspects of this Policy are (1) to protect the information, data and state information infrastructure and the technology used for processing them from internal or external threats, whether deliberate or accidental, to ensure the confidentiality, integrity, availability, legality and reliability of the information, and (2) to ensure the implementation of legislative proposals and regulations relating to information security or cybersecurity.

Statute No. 30999 (Cyber defence law, passed on 26 August 2019) establishes the regulations framework on cyber defence of Peru, regulating the military operations in and through the cyberspace executed by bodies that are part of the Ministry of Defence within their scope of competence. The purpose of this regulation is to defend and protect the sovereignty, national interests, national critical assets and key resources to maintain the nation's capacity to face threats or attacks in and through cyberspace insofar as they affect national security.

Since it is a very recent law, there is still no case law.

9 Does your country regulate cybercrime? What is the approach of law enforcement authorities in your country to cybercrime?

Statute No. 30096 (Law of Computer Crimes, passed on 21 October 2013) sanctions behaviour such as illegal access and attacks on the integrity of computer systems (hacking), propositions with sexual purposes to underage children through technological means, computer fraud, among others.

Cross-border issues and foreign authorities

10 Does local criminal law have general extraterritorial effect? To the extent that extraterritorial effect is limited to specific offences, give details.

Article 2 of the Criminal Code establishes a general rule that Peruvian law applies to a crime committed abroad, when:

- the person committing the crime is a Peruvian public official or servant fulfilling the duties of his or her office;
- public security or tranquillity are attacked, or the incident involves money laundering, provided the effects of the incident occur in Peru;
- the act or behaviour offends the Peruvian state and national defence, the powers of the state and the constitutional order, or the monetary order;
- the act or behaviour is committed against a Peruvian or by a Peruvian and the crime is foreseen as susceptible to extradition pursuant to Peruvian law, provided it is also punishable in the state where it was committed and the agent enters Peru in any way; or
- Peru is obliged to repress such behaviour according to international treaties.

In turn, Article 397-A of the Peruvian Criminal Code sanctions those who offer, grant or promote, directly or indirectly, bribery to foreign officials in exchange for obtaining a particular advantage for himself or herself or for others within the framework of international economic or trade activities (transnational bribery).

- 11 Describe the principal challenges that arise in your country in cross-border investigations, and explain whether and how such challenges depend on the other countries involved.**

In such investigations, one of the main challenges is the time it takes to process the official communications with the authorities of other countries; for example, for international judicial assistance. However, in respect of the emblematic cases, such as *Operation Car Wash*, the delay in replies and effective assistance by foreign authorities has been considerably reduced.

- 12 Does double jeopardy, or a similar concept, apply to prevent a corporation from facing criminal exposure in your country after it resolves charges on the same core set of facts in another? Is there anything analogous in your jurisdiction to the ‘anti-piling on’ policy as exists in the United States (the Policy on Coordination of Corporate Resolution Penalties) to prevent multiple authorities seeking to penalise companies for the same conduct?**

Under the protection of Article 6(c) of the Code of Criminal Procedure, the *non bis in idem* principle or res judicata is applicable if there is the intention of criminally investigating a company in Peru for deeds that have previously been subjected to a final decision by a foreign authority against the same company.

If a company is being investigated both administratively and criminally for the same deeds and on the same grounds, by virtue of Article III of the Preliminary Title of the Code of Criminal Procedure, the criminal jurisdiction prevails over the administrative one. Other than this, there is no institution that is analogous to the US ‘anti-piling on’ policy.

- 13 Are ‘global’ settlements common in your country? What are the practical considerations?**

There is no record any global settlement, neither is there a specific regulation of the matter.

- 14 What bearing do the decisions of foreign authorities have on an investigation of the same matter in your country?**

Matters investigated in another country that could have an effect in Peru can be considered as evidence to initiate a criminal investigation. Likewise, the authorities may initiate a judicial co-operation agreement with foreign authorities to share relevant information and evidence. For example, this is happening in *Operation Car Wash* with the information provided by the Brazilian authorities.

Economic sanctions enforcement

- 15 Describe your country's sanctions programme and any recent sanctions imposed by your jurisdiction.

The Peruvian government has not imposed economic sanctions against foreign countries, governments, entities or people who may represent a threat to the interests of Peru or of the international community.

- 16 What is your country's approach to sanctions enforcement? Has there been an increase in sanctions enforcement activity in recent years, for example?

Peru has not applied any economic sanctions.

- 17 Do the authorities responsible for sanctions compliance and enforcement in your country co-operate with their counterparts in other countries for the purposes of enforcement?

Not applicable.

- 18 Has your country enacted any blocking legislation in relation to the sanctions measures of third countries? Describe how such legislation operates.

There is no blocking legislation in Peru.

- 19 To the extent that your country has enacted any sanctions blocking legislation, how is compliance enforced by local authorities in practice?

There is no blocking legislation in Peru.

Before an internal investigation

- 20 How do allegations of misconduct most often come to light in companies in your country?

Misconduct usually arises through media reports, internal audits and, in those companies supervised by the financial intelligence unit (companies within the financial system, mining activity, construction, etc.), through reports of suspicious operations of money laundering to the regulator.

Information gathering

- 21 Does your country have a data protection regime?

Statute No. 29733 (Law of Personal Data Protection, passed on 2 July 2011) and its Regulation, Supreme Decree No. 003-2013-JUS, have as a purpose to guarantee the fundamental right of protection of privacy. Regarding companies, they are expected to provide appropriate treatment of the personal data of their clients, workers and other natural persons related to their activity.

The titleholder of the personal data has the rights of information, updating, inclusion, correction, suppression, opposition, objective treatment, protection and of being indemnified. The National Authority for the Protection of Personal Data may sanction a company if it proves that it made any inappropriate use of the personal data.

22 To the extent not dealt with above at question 8, how is the data protection regime enforced?

The Peruvian Data Protection Authority has been issuing fines for non-compliance with the rules on personal data protection since 2015. The organisations that have been fined are of different types, including clinics, universities, banks and public entities. As an example, Google Inc was sanctioned in 2016 with a fine of up to 256,750 Peruvian soles.

It is important to bear in mind that Peruvian data privacy rules are applicable not only to natural persons or legal entities established in Peru, but also to those using media located in Peruvian territory.

23 Are there any data protection issues that cause particular concern in internal investigations in your country?

In the event that an internal investigation entails sharing information with peers located abroad (for example, a parent company or law firm), the cross-border flow of information must be duly communicated to the national authority and comply with the legal provisions.

24 Does your country regulate or otherwise restrict the interception of employees' communications? What are its features and how is the regime enforced?

Although there is no rule that specifically regulates the control of work tools (email, cell phones, etc.) by an employer, Article 2.10 of the Constitution establishes that every person has the right to secrecy and to the inviolability of communications and private documents.

The Constitutional Tribunal (Docket Nos. 114-2011-PA/TA, 3599-2010-PA/TC and 05532-2014-PA/TC) and the Supreme Court (Cassation No. 14614-2016-LIMA) have established, from a labour point of view, that an employer is forbidden to inspect the use of corporate email assigned to its employees, unless it has the express authorisation of the employees every time the employer wants to log in to view the email. Thus, a general waiver signed by an employee when joining the company will not be sufficient.

However, in the criminal sphere (Nullity Appeal No. 817-2016/Lima), the Supreme Court established that if there is a high probability that corporate email has been used to exchange communications with criminal content, it is not illegal or unconstitutional for the employer to inspect its employees' email for the purposes of a criminal claim. A prosecutor may subsequently use the email as admissible evidence in a criminal procedure.

Dawn raids and search warrants

- 25 Are search warrants or dawn raids on companies a feature of law enforcement in your country? Describe any legal limitations on authorities executing search warrants or dawn raids, and what redress a company has if those limits are exceeded.**

Search warrants are used frequently by Prosecutors, particularly in emblematic investigations for corruption or money laundering crimes, such as *Operation Car Wash*.

According to Article 214° of the Code of Criminal Procedure, a search can be carried out when there are reasonable reasons to consider that evidence may be found inside the premises subject to the search. Authorisation by a judge is required.

Both the search and the seizure of documents must be limited to what has been authorised by the judge. There is a possibility of controlling a warrant dictated by a judge through an appeal in which the pertinence, proportionality and reasonableness of the measure are discussed. However, even if the search is considered legal, the judge can be asked to exclude privileged material and any documents not related to the investigation.

- 26 How can privileged material be lawfully protected from seizure during a dawn raid or in response to a search warrant in your country?**

Privileged material cannot be seized during a search ordered by a judge and carried by a prosecutor. In this sense, it is recommended that all materials or reports of this nature be labelled as 'protected under professional secrecy', in accordance with the procedure established in Article 2.18° of the Constitution, Article 30° of the Attorney's Code of Ethics and Article 165° of the Criminal Code. Moreover, the presence of an external lawyer is recommended during a search to enforce privilege over documents having such a condition. The Supreme Court has ruled that 'the right to the professional secrecy must prevail over the right to obtain evidence' (Cassation No. 272-2016-Tacna, fj. 13).

- 27 Under what circumstances may an individual's testimony be compelled in your country? What consequences flow from such compelled testimony? Are there any privileges that would prevent an individual or company from providing testimony?**

As investigated parties, people are not compelled to testify. They have the right to remain silent, and silence cannot be treated negatively. As witnesses, however, people are compelled to testify. Nevertheless, there is the possibility of opposing the testimony when some specific circumstances apply, such as the fact that questions may refer to the witness's own criminal liability, that the investigated party is a close relative or that the questioning is about some type of professional secrecy or state secret.

Moreover, investigated parties are not compelled to collaborate with their own prosecution.

Whistleblowing and employee rights

- 28 Describe the whistleblowing framework in your country. What financial incentive schemes exist for whistleblowers? What legal protections are in place for whistleblowers?**

There are no specific financial incentives for whistleblowers in criminal procedures. However, Article 39° of the Regulation of Statute No. 30424 establishes that companies must adopt protection measures to avoid retaliation against the people that use a whistleblowing channel.

- 29 What rights does local employment law confer on employees whose conduct is within the scope of an investigation? Is there any distinction between officers and directors of the company for these purposes?**

During the process of an internal investigation, ‘non-specific labour rights’ are applicable. This relates to actions, the legal entitlement – and enforceability – of which goes beyond the standard entitlements of workers (as set forth in the Constitution), such as presumption of innocence, due process, right of defence, right to intimacy, right to secrecy and inviolability of communications, among others.

- 30 Do employees’ rights under local employment law differ if a person is deemed to have engaged in misconduct? Are there disciplinary or other steps that a company must take when an employee is implicated or suspected of misconduct, such as suspension or in relation to compensation?**

All employees have the same rights during the term of the work contract. During an investigation, the employer cannot adopt any type of preventive measure (for example, suspension of the contract), unless he or she has the employee’s consent. The only exception to this rule is foreseen for cases of sexual harassment, in which the employer is entitled to suspend – or transfer to another workplace – the alleged harasser to protect the victim.

Without prejudice to the foregoing, in practice employers usually grant paid leave unilaterally to the employees involved in an investigation. Notwithstanding, this practice could be questioned alleging an affectation to the right to ‘effective occupation’.

Finally, the employer may adopt disciplinary measures when he or she indubitably verifies that an employee has engaged in labour misconduct or irregularity. In the event a dismissal proceeding is initiated, the employee must be notified in a letter detailing the facts that constitute the serious offence that may lead to his or her dismissal.

- 31 Can an employee be dismissed for refusing to participate in an internal investigation?**

As a general rule, an employee’s participation in an investigation should be voluntary or consented.

However, the seriousness of the investigated deeds and their relation to the position of the employee could mean a failure to comply with the labour obligations in the event that he or she refused to collaborate during an investigation process. In such a situation, we consider that this would constitute an assumption of violation of the labour good faith. In

this situation, the employer may impose reasonable and proportionate disciplinary measures (warnings, suspensions or even dismissal).

Commencing an internal investigation

- 32 Is it common practice in your country to prepare a document setting out terms of reference or investigatory scope before commencing an internal investigation? What issues would it cover?**

It is not a common practice. However, it is recommended that at the commencement of each internal investigation, a document be prepared defining its objectives and scope. Likewise, among other aspects to prioritise, the hypothesis of the investigation, the team in charge of the investigation and the means of proof to be used should be defined, as well as the fact that, owing to the nature or complexity of the investigated deeds, external advice will be required, both legal and regarding public relations.

- 33 If an issue comes to light prior to the authorities in your country becoming aware or engaged, what internal steps should a company take? Are there internal steps that a company is legally or ethically required to take?**

There is no legal obligation for companies to report dishonest behaviour that has occurred. However, once an internal investigation has commenced, the company must try to remedy or compensate the damage caused, identify and correct any internal proceeding the failure of which originated the dishonest behaviour, particularly any action relating to the compliance model. Likewise, according to Article 38° of the Regulation of Statute No. 30424, the internal investigation and subsequent self-reporting could be taken as a sign of an effective compliance model and, therefore, could release the company from liability.

- 34 What internal steps should a company in your country take if it receives a notice or subpoena from a law enforcement authority seeking the production or preservation of documents or data?**

It is advisable for the company to have a protocol to address such requests satisfactorily and in which the following steps are established:

- Identification of the actions that have brought about the authority's request, in collaboration with the company's legal department or external legal advisers.
- Verification of the validity of the authority's request, that is to say it is not violating any fundamental right such as due process, professional secrecy or protection of personal data.
- Informing the competent authority if the information is in the hands of third parties or if it requires a third party's authorisation to be submitted.
- A detailed review of the information, prior to submission, to identify any legal contingency that could arise from it.
- Designing a defence strategy, both from a legal and a communication point of view, to mitigate the contingencies that could be generated by the submission of information.
- If, as a result of receiving a notice or subpoena, a company becomes aware of any dishonest behaviour within the company, an internal investigation must be commenced to establish its scope.

35 At what point must a company in your country publicly disclose the existence of an internal investigation or contact from a law enforcement authority?

There is no obligation to publicly disclose the existence of an internal investigation. However, at the moment of deciding whether to disclose this information, companies must take into consideration the following factors:

- the degree of probability that the prosecutor or another authority becomes aware of the facts that are the subject matter of the investigation;
- the existence of an internal investigation may demonstrate to the authorities that the company itself, through its compliance model, identified, investigated and sanctioned dishonest behaviour; and
- by collaborating with the authorities in providing relevant information that allows clarification of the criminal deed, the company could be applying for an attenuation or exemption of the sanction.

36 How are internal investigations viewed by local enforcement bodies in your country?

Spontaneous internal investigation for suspicion of criminal wrongdoings is a tool that has only recently been available within the Peruvian corporate environment. There is still no case law about its real worth to the authorities. However, any form, or sign, of collaboration with the investigation is always well received by prosecutors.

Attorney–client privilege

37 Can attorney–client privilege be claimed over any aspects of internal investigations in your country? What steps should a company take in your country to protect the privilege or confidentiality of an internal investigation?

Although there is no specific regulation in Peru, the attorney–client privilege could be claimed over the findings of an internal investigation in which an external attorney directly participated. In this sense, it is advisable that the instrument or document that initiates the investigation identifies the external attorneys who will participate and that their intervention is documented, for example, during the interviews and in the communications exchanged by the team in charge of the inquiry.

38 Set out the key principles or elements of the attorney–client privilege in your country as it relates to corporations. Who is the holder of the privilege? Are there any differences when the client is an individual?

According to the Code of Ethics of the Peruvian Bar Association, there is no distinction in the treatment of the attorney with the client when the latter is a natural person or corporation. In this sense, the scope of the attorney–client privilege is the same for both.

Likewise, in the framework of an internal investigation, to avoid the lawfulness of the gathered information or the scope of the attorney–client privilege being questioned, it is advisable to inform the parties at each stage of the investigation that the external attorney

only represents the interests of the company; thus, the privilege will be between the attorney and the company and not between the attorney and the employee being interviewed.

The holder of the privilege is the client.

39 Does the attorney–client privilege apply equally to in-house and external counsel in your country?

Although there is no specific regulation in Peru, based on the guidelines adopted by foreign courts (for example, in the European Court of Justice *Akzo Nobel Chemicals Ltd* case), a sector of Peruvian specialists considers that the attorney–client privilege only applies when external attorneys are involved.

40 Does the attorney–client privilege apply equally to advice sought from foreign lawyers in relation to (internal or external) investigations in your country?

To the extent that the waiver to the privilege corresponds to the client, it would apply equally to the advice provided by both national and foreign external attorneys regarding an investigation carried out in Peru.

41 To what extent is waiver of the attorney–client privilege regarded as a co-operative step in your country? Are there any contexts where privilege waiver is mandatory or required?

In the framework of an effective collaboration, if a company wants to obtain a benefit that, in the best-case scenario, exempts it from liability, it is advisable to waive the attorney–client privilege, if necessary, to provide all the information required by the authorities. Waiver of this privilege is always voluntary.

42 Does the concept of limited waiver of privilege exist as a concept in your jurisdiction? What is its scope?

There is no specific regulation in Peru. However, a company could waive privilege before the prosecutor and maintain privilege before third parties denying the production of the same information. However, law enforcement may share the information waived to other government agencies.

43 If privilege has been waived on a limited basis in another country, can privilege be maintained in your own country?

The attorney–client privilege can be maintained in Peru after a limited waiver in another country. However, the information disclosed in another country may be shared with Peruvian authorities through international co-operation.

44 Do common interest privileges exist as concepts in your country? What are the requirements and scope?

This concept does exist in Peru. If there are no conflicts of interest, the same attorney may represent several clients in the same criminal procedure.

45 Can privilege be claimed over the assistance given by third parties to lawyers?

The attorney–client privilege extends to those who assist external attorneys, such as experts, accountants and translators, among others.

Witness interviews

46 Does your country permit the interviewing of witnesses as part of an internal investigation?

Yes.

47 Can a company claim attorney–client privilege over internal witness interviews or attorney reports?

Yes (see also question 39). In turn, it is advisable that at each stage of an internal investigation, the external attorney announces that his or her intervention is on behalf of the company and not as an attorney of any internal witness.

48 When conducting a witness interview of an employee in your country, what legal or ethical requirements or guidance must be adhered to? Are there different requirements when interviewing third parties?

The parameters of the interviews within an internal investigation are not regulated in Peru. However, to avoid the admissibility of the gathered evidence being questioned in the event the company decides to share it with the competent authority, it is advisable to inform the employee or third party before starting the interview that the attorney–client privilege applies to the company and not the employee or third party.

49 How is an internal interview typically conducted in your country? Are documents put to the witness? May or must employees in your country have their own legal representation at the interview?

Although there is no predetermined protocol for conducting interviews, it is common that an attorney participates in them as a representative of the company. Likewise, minutes are usually written, transcribing part of the information provided. This document is signed by the interviewed employee as a declaration that it conforms with what was said.

It is not common that employees have their own legal representation during interviews. However, if an employee does request the attendance of a lawyer, the employer should agree to the request to prevent the employee from alleging any coercion in making his or her statement.

Reporting to the authorities

50 Are there circumstances under which reporting misconduct to law enforcement authorities is mandatory in your country?

There is no legal obligation for companies to report misconduct to the authorities.

- 51 In what circumstances might you advise a company to self-report to law enforcement even if it has no legal obligation to do so? In what circumstances would that advice to self-report extend to countries beyond your country?**

Self-reporting is advisable when it is probable that the company may obtain a benefit in exchange for the information it provides and that the prosecutor may find out about the wrongdoing by other means. Self-reporting will be considered as evidence that the compliance programme of the company was efficient and the company could receive a reduced penalty or even an exemption from a penalty. If the decision to self-report has been made in Peru, it is advisable also to make the self-report in other countries that have jurisdiction to prosecute the crimes.

- 52 What are the practical steps you need to take to self-report to law enforcement in your country?**

There is no express regulation on how to self-report. It is advisable that an external attorney seeks an interview with the prosecutor order to establish his or her interest in the matter. However, it is also advisable to delay arranging such an interview until after an internal investigation has established the actual scope of the misconduct, the persons involved and the legal, financial and reputational contingencies that could be activated.

Responding to the authorities

- 53 In practice, how does a company in your country respond to a notice or subpoena from a law enforcement authority? Is it possible to enter into dialogue with the authorities to address their concerns before or even after charges are brought? How?**

How a company should respond to a notice or subpoena will depend on the conditions under which it has been served. If the company is included as a defendant in an investigation, it is recommended that its attorneys review the case file held by the authorities before providing any kind of statement or information. However, if a company has been called only as a witness, its lawyers do not have the right to review the case file. Nevertheless, the company representative who has been called as a witness does have the constitutional right to be advised by an attorney during his or her testimony before the authorities.

In-house or external lawyers may have interviews with prosecutors to address their concerns, such as to clarify the scope of the subpoena and the deadline to comply with.

- 54 Are ongoing authority investigations subject to challenge before the courts?**

Motions challenging investigations may be filed when the investigated deeds lack any criminal nature or when fundamental rights are violated, such as due process, the right to produce evidence, etc.

- 55 In the event that authorities in your country and one or more other countries issue separate notices or subpoenas regarding the same facts or allegations, how should the company approach this?**

Companies should address the local subpoena to the full extent regardless of the existence of a foreign subpoena. Local law enforcement authorities will not take into account the subpoenas issued by foreign authorities in making any alterations to the scope of their inquiry and will expect compliance with the local request. Therefore, companies should verify that the information provided to the different authorities, both domestic and foreign, is not contradictory.

- 56 If a notice or subpoena from the authorities in your country seeks production of material relating to a particular matter that crosses borders, must the company search for, and produce material, in other countries to satisfy the request? What are the difficulties in that regard?**

The general rule is that the company must comply with the subpoena. However, if the scope is unreasonable or the costs to produce the material are prohibitive, a motion may be filed to the competent judge (see question 5).

- 57 Does law enforcement in your country routinely share information or investigative materials with law enforcement in other countries? What framework is in place in your country for co-operation with foreign authorities?**

Lately there has been an increase in law enforcement co-operation with other countries as a result of *Operation Car Wash*. The Code of Criminal Procedure regulates the formalities that must be observed.

- 58 Do law enforcement authorities in your country have any confidentiality obligations in relation to information received during an investigation or onward disclosure and use of that information by third parties?**

A prosecutor's investigation is confidential. Only the investigated parties and the attorneys of the alleged victims may have access to it (note that in corruption or money laundering cases, the victim is represented by the state attorney). If the case reaches trial, which is public, the information may be disclosed.

- 59 How would you advise a company that has received a request from a law enforcement authority in your country seeking documents from another country, where production would violate the laws of that other country?**

A legal report from counsel in the foreign country should be obtained, explaining that the information may not be produced.

- 60 Does your country have secrecy or blocking statutes? What related issues arise from compliance with a notice or subpoena?**

There are some sectors in which statutes of secrecy exist, such as banking, tax reports and communications. In the event that a foreign state requires this type of information, it must obtain an order from a Peruvian judge.

- 61 What are the risks in voluntary production versus compelled production of material to authorities in your country? Is this material discoverable by third parties? Is there any confidentiality attached to productions to law enforcement in your country?**

The confidentiality of the information or documentation provided to the authorities need only be maintained during the investigation phase. The information may be revealed at trial. Further, foreign regulators may seek the information produced through international co-operation channels.

Prosecution and penalties

- 62 What types of penalties may companies or their directors, officers or employees face for misconduct in your country?**

The sanctions to companies imposed by a criminal judge are fines, temporary suspension of activities, cancellation of licences, debarments and, when they have been incorporated and operated just to commit crimes, the dissolution of the company. A monitor can be appointed for up to two years. The natural persons, public and private officers can be sanctioned with imprisonment, fines and disgorgement. All this without prejudice to repairing the generated damages that must be jointly and severally assumed by the natural persons and the company.

- 63 Where there is a risk of a corporate's suspension, debarment or other restrictions on continuing business in your country, what options or restrictions apply to a corporate wanting to settle in another country?**

Peruvian courts have no jurisdiction to avoid companies resettling in another country. However, information about local wrongdoing may be shared to foreign authorities through international co-operation to enable suspensions or debarments.

- 64 What do the authorities in your country take into account when fixing penalties?**

A judge will take into account the benefit the company has obtained or expects to obtain from committing the crime when imposing a fine, which is usually between twice and six times the amount of the benefit. If the benefit cannot be determined, the company's annual income will be taken into account by the judge to fix the fine.

Resolution and settlements short of trial

- 65 Are non-prosecution agreements or deferred prosecution agreements available in your jurisdiction for corporations?**

Yes. For this purpose, the company must admit committing the crime, provide evidence against third parties – usually public officers – and remediate. In exchange, the companies could obtain exonerations or reduced sanctions. If it is found that the companies hid information or did not fully collaborate, the agreement can be reverted and the criminal proceedings may continue.

- 66 Does your jurisdiction provide for reporting restrictions or anonymity for corporates that have entered into non-prosecution agreements or deferred prosecution agreements until the conclusion of criminal proceedings in relation to connected individuals to ensure fairness in those proceedings?**

The effective collaboration agreements are ruled precisely by secrecy from the beginning to the end of the investigation. The other investigated parties do not know the identity of the collaborator.

- 67 Prior to any settlement with a law enforcement authority in your country, what considerations should companies be aware of?**

The company should weigh the collateral effects of confessing to committing a crime, such as reputational and financial damage. Likewise, the company should take into account that its collaboration may result in members or former members of the company being sentenced to imprisonment.

- 68 To what extent do law enforcement authorities in your country use external corporate compliance monitors as an enforcement tool?**

Since January 2018, external monitors may be imposed for up to two years as a sanction by a judge. However, such a measure has not been enforced to date.

- 69 Are parallel private actions allowed? May private plaintiffs gain access to the authorities' files?**

Private actions parallel to the criminal proceeding are allowed, as is a proceeding for reparation or indemnification for damages. However, if the injured party so desires it, that party can take on a civil action in the criminal proceeding and request civil reparation in the same criminal proceeding. In these circumstances, the party injured by the crime will have access to all the evidence in the criminal proceeding.

Publicity and reputational issues

- 70 Outline the law in your country surrounding publicity of criminal cases at the investigatory stage and once a case is before a court.**

The Code of Criminal Procedure establishes the prohibition of publishing the procedural actions during a prosecution investigation. However, the trial is public. There are certain exceptions, including when the sexual morality, the private life or the physical integrity of someone participating in the trial is affected, when national security is affected, or when a particular commercial or industrial secret is threatened.

- 71 What steps do you take to manage corporate communications in your country? Is it common for companies to use a public relations firm to manage a corporate crisis in your country?**

There is no general rule, and our recommendations will vary depending on the assessment of each case. Having said that, if the client is a large corporation and is facing a severe crisis

related to a criminal investigation, we always advise hiring a public relations agency, which should work alongside the lawyers to assess both the accuracy and the strategic effects of the information provided to stakeholders and of public opinion. Further, the company's strategy should aim to stop the spread of news relating to any criminal contingency.

72 How is publicity managed when there are ongoing related proceedings?

Publicity depends on the degree of media coverage, or on the role of the company or the individual in society. The statements of a company under investigation must be short and not lead to speculation.

In Peru, confidential information about an investigation is usually leaked to the media when there is a case of public interest.

Duty to the market

73 Is disclosure to the market in circumstances where a settlement has been agreed but not yet made public mandatory?

It could be mandatory if the company in which the settlement has been agreed is a listed company and if the settlement, or the settled issue, is capable of having significant influence on the security of the company, its business, its financial situation or any other aspect that could be considered relevant by a reasonable investor, or that could alter the decision to sell, purchase or keep securities for a reasonable investor. If deemed mandatory, a reserved report could be made, thus the company will report the settlement to the regulator only. However, authorisation for such a report is at the regulator's discretion. Hence, if granted, full disclosure will not be required until approval of the settlement by the judge.

Anticipated developments

74 Do you expect to see any key regulatory or legislative changes emerge in the next year or so designed to address corporate misconduct?

The Stock Market Superintendence has scheduled the publication of guidelines to clarify what they expect from effective compliance models.

Appendix 1

About the Authors

Alberto Rebaza

Rebaza, Alcázar & De Las Casas

Alberto Rebaza is the founding and managing partner of Rebaza, Alcazar & De Las Casas. As partner, he co-leads the mergers and acquisitions and corporate areas. In addition to his master's degree from the University of Virginia, he has studied at Georgetown University and in England.

Alberto has been consistently considered by legal rankings as a leading lawyer in mergers and acquisitions. He has been a speaker at conferences in Dublin, São Paulo, Bogotá, Panama City, Barcelona, New York City, Mexico City and Singapore, among others.

He has been a director for several companies and organisations, such as Edegel (energy), Rigel Peru (insurance), Liderman (services), Amrop (services), IPAE, Pesquera Alexandra (fishing) and YPO.

Very much involved in the arts world, Alberto is vice president of the Museum of Art of Lima, a member of the international patronage committee of the Reina de Sofia Museum and a member of the Latin American Circle at the Guggenheim Museum in New York.

Augusto Loli

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Augusto Loli is one of the main partners of Rebaza, Alcázar & De Las Casas, where he leads the litigation practice area. He has over 20 years of experience as a professional attorney specialising in white-collar crime, compliance and complex corporate litigation. He has designed and implemented the defence strategies of several high-profile criminal cases involving public officials, the financial sector, telecommunications infrastructure, industry and commerce for clients from Latin America, the United States and Europe. He graduated from the National University of San Marcos and completed his master's studies in criminal law at the same university. He is a professor of white-collar criminal law at the St Ignatius of Loyola University and of procedural criminal law at the University of Piura.

In addition to his private practice, he has been consulted several times by government entities, including the Advisory Committee of the Commission of Human Rights of the Congress of the Republic of Peru and the Citizen Security Commission. He is recognised by international legal publications as a leading lawyer and recommended in Peru as an expert within his field.

Héctor Gadea

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Héctor Gadea is a graduate lawyer from the Pontifical Catholic University of Peru. In 2014, he was awarded an LLM by Columbia University, New York. In addition, he holds a master's degree from the universities of Barcelona and Pompeu Fabra (Spain). Héctor is certified by the Society of Corporate Compliance and Ethics as a compliance and ethics professional.

Héctor is a partner at the firm, where he focuses his practice on litigation, white-collar crime and corporate compliance. He is a former criminal law lecturer at the Pontifical Catholic University and the Peruvian Judiciary Academy. He has participated as a speaker at a number of international conferences and events.

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María Haydée Zegarra leads the labour and employment law practice and has extensive experience in providing legal counselling on personnel hiring and layoffs, collective bargaining, outsourcing of workforce, implementation of internal policies and internal investigations for companies in the fishing, port industry, telecommunications, financial, insurance, agro-industrial and aeronautical sectors.

She has been highlighted by our clients for the preparation of strong defence strategies in relation to judicial processes and administrative inspections thanks to her knowledge of the client's operational know-how and more than 15 years of experience in the labour field.

María Haydée actively participates in training workshops for companies on labour issues, such as employment modalities, management of overtime working, disciplinary sanctions management, employment of foreign employees, among others.

Sergio Mattos

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Sergio Mattos is a graduate lawyer from the University of St Martin de Porres. In 2017, he was awarded a Chevening scholarship to complete a master of laws degree, with a particular emphasis on criminal justice, at the London School of Economics and Political Science (United Kingdom). He also holds a master's degree, with a specialisation in criminal law, from the University of Seville (Spain), where he also completed his doctoral studies in the same field.

Sergio is a senior associate at the Lima office, where he focuses his practice on litigation, white-collar crime and corporate compliance. He is a former lecturer in criminal law at the Scientific University of the South (Peru). He has also written and published several research articles focused on substantive aspects of criminal law, and he has been a speaker at a number of conferences, both in Peru and abroad.

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