



*HOW ARE COMPLIANCE PROGRAMS  
CHANGING THE LATIN AMERICAN BUSINESS  
LANDSCAPE?*

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*THE HONORABLE FAUSTO MARTIN DE SANCTIS, JUDGE,  
BRAZIL FEDERAL COURT OF APPEALS*

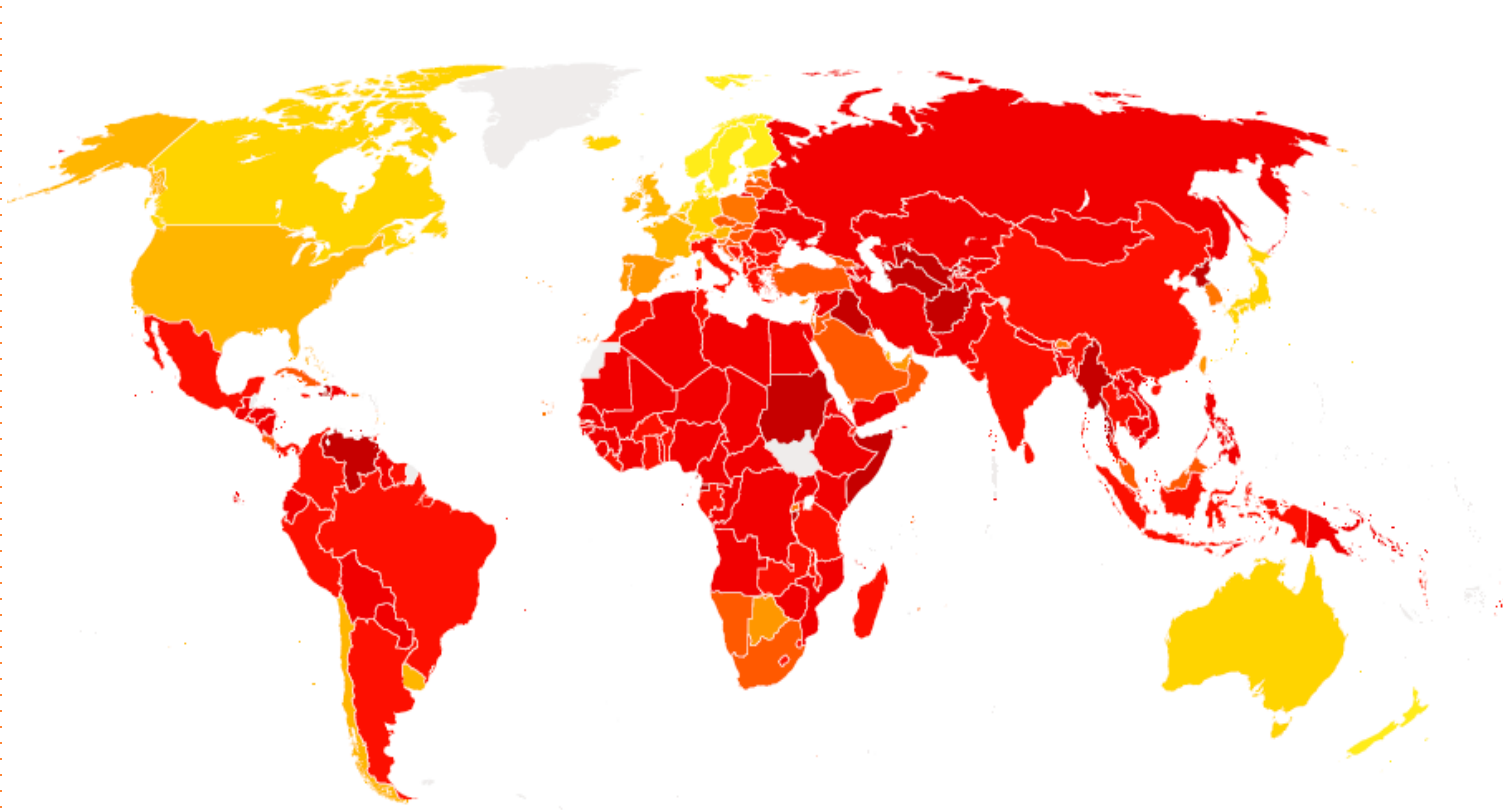
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-Economic, social and policultural aspects-



# MORGAN STANLEY CASE

- Garth R. Peterson was Director in the area of Real Estate Investment and Fund Advisory Group - Morgan Stanley / China; Between 2004 and 2007, Peterson found a 'secret way' to divert at least \$ 1.8MM for himself and an officer of the Chinese Government; Peterson still managed secretly to enable you, the Official Chinese and a Canadian lawyer (unidentified) interests in property very valuable in Shanghai - acquired a fund's own by Morgan Stanley;
- The result of all this?
- Peterson was caught ...
- And the bill was high!



# MORGAN STANLEY CASE

- - In 25/Abr/12 Peterson pleaded guilty to conspiracy and violating internal accounting controls that Morgan Stanley had created in respect and obedience to the FCPA;
- -Judgment - up to 5 years in prison. - Peterson was also convicted in the civil sphere. He agreed to (a) reimburse USD 250K to SEC, (b) Losing interest in the property in Shanghai for which he paid USD 3.4M (c) Banned permanently from the securities market; - For the position he held and the nature of the breach (internal controls - FCPA), had great probability of the DOJ and SEC also sue Morgan Stanley civilly and criminally for violation of tax records and internal controls for FCPA;

○ <b>Company</b>	<b>Penalty</b>	<b>Year</b>
○ Siemens (Alemanha)	U\$ 800 KK	2008
○ KBR / Halliburton (EUA)	U\$ 579 KK	2009
○ BAE (Inglaterra)	U\$ 400 KK	2010



# MORGAN STANLEY CASE

- **DOJ and SEC decided not to prosecute the Morgan Stanley ... And why?**
- **self disclosure** was made of the case to the authorities;
- A thorough **internal investigation was conducted**;
- **Full cooperation** from Morgan Stanley to DOJ and SEC.
- The SEC expressly mentioned in the case against Peterson the details of the Anti-Corruption Compliance Program and Morgan Stanley, among them, the following evidence:



# MORGAN STANLEY CASE

- **Peterson was trained in the subject Anticorruption (AC) and FCPA at least seven times between 2002 and 2008, among them, a specific training given by the AC in 2006 "Global Head of Morgan Stanley";**
- **proven Peterson received the training materials on AC and FCPA, and kept them in his office;**
- **Peterson was informed in 2004 that the company's employees were involved Chinese "Government Officials" in the eyes of the FCPA;**
- **Peterson received at least 35 "-FCPA Compliance Reminders" on Policy, Code of Conduct, Gifts and Entertainment, Politics BC Politics on specific events "high risk", including the Beijing Olympics;**
- **Proven conducted thorough due diligence on all business partners.**



# MORGAN STANLEY CASE

- *“Although DOJ and SEC officials have many times claimed that companies receive a benefit from investing in ethics and compliance programs, up to this point there has been little solid evidence of that benefit. **With this case, however, the enforcers have made clear just how important an effective ethics and compliance program can be, and just what an enormous benefit investment in the program can bring**” . (Douglas Tween and Paul McNulty – ‘Effective Compliance Program Helps Investment Bank Avoid FCPA Criminal Charges’, Baker & McKenzie, Client Alert - May 2012)*



- **Leadership**: Strong compliance programs have the explicit endorsement and unqualified support of the most senior executives in the company. In addition, companies with robust compliance programs appoint a capable professional to the position of compliance officer, with sufficient authority and resources, and with sufficient autonomy from management, to insure the program is effective to **deter, detect and punish unethical business conduct**.
- **Code of Conduct**: The Code of Conduct is the **foundation of a compliance program**. It establishes the rights and obligations of a company's directors, managers, employees, agents and commercial partners. It contains anti-corruption and anti-bribery requirements, as well as specific guidance for doing business with public and private sector entities, business courtesies, travel and entertainment, intellectual property management, financial integrity and conflicts of interest.
- **Internal Controls**: Internal controls are mechanisms, usually formalized in writing, that **insure that books and records reflect a company's business and operations**.
- **Training**: The impact of a compliance program is also generally measured by the frequency and quality of training, which if a company is of sufficient size, may include sessions targeted separately to internal management and to employees. **Training may be delivered online or in person, where attendance is tracked and documented**.

## 8 PILLARS OF AN EFFECTIVE COMPLIANCE PROGRAM





# 8 PILLARS OF AN EFFECTIVE COMPLIANCE PROGRAM

- **Reporting Channels**: Reporting channels provide employees and commercial partners a way to alert a company to potential violations of the Code of Conduct and other business policies and practices..
- **Enforcement**: Such programs define appropriate and consistently applied corrective action in case of violation to Code of Conduct or other policies, no matter the level of the offending officer, manager or employee.
- **Due Diligence**: A best practice for companies that conduct substantial business through agents or resellers is a robust due diligence process to clarify the ownership structure, financial status, business and legal history of potential agents and other commercial partners, and to confirm whether any of them has a reputation for unethical business practices or may otherwise expose a company to unacceptable business or legal risks.
- **Transparency**: A process that provides for the disclosure of any conflicts or potential conflicts of interest as they arise, whether by a company's owners, directors, officers, managers or employees or by a company's agents or commercial business partners, is a common feature of a compliance program.



TY

Thank you.

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