

Brazil's New Anti-Bribery Law and the Challenges Ahead

Brazil's new anti-bribery law (Law No. 12,846/13) was signed into law by President Dilma Rousseff on August 1st 2013 and will enter into force on 29th January 2014. The key features of the new law regard the introduction of corporate liability for corrupt practices directed at foreign and national officials; a new institutional framework; and an enhanced interface between anti-bribery and anti-cartel enforcement rules. The main provisions are summarized below.

Strict corporate liability for corrupt practices. Brazilian and foreign companies (with headquarter, branch or office in Brazil) can be held accountable for, directly or indirectly (*i.e.*, via third parties or intermediaries), promising, offering, giving bribes or financing corruption of Brazilian or foreign officials (including officers of public international organizations). Under the new law, no proof of intent is required; proof that bribes were paid will suffice.

The new anti-bribery law also provides for a broad list of illegal conducts regarding public tenders, but not necessarily related to corrupt practices (*e.g.*, bid rigging).

Investigative authorities. The highest authority of the specific government entity (at the Executive, Legislative or Judicial branches) where the alleged conduct took place will be responsible for the enforcement of the new anti-bribery law. At the Federal Executive branch, the Office of the Comptroller General (CGU) may also initiate independent investigations or take over existing ones. Corrupt practices directed at foreign officials will be enforced solely by the CGU. The law grants the agencies broad investigative powers, including search and seizure procedures.

Consistent and effective enforcement of the new law is likely to be challenging due to the absence of a specific agency in charge. A wide range of officials at different levels of government may interpret differently the language of the statute, which may result in relevant procedural and substantive differences in enforcement.

Administrative and civil sanctions. Administrative fines will range from 0.1% to 20% of the company's gross revenues in the year prior to the initiation of the investigation (or BRL 6,000 to 60 million if not possible to determine the company's revenues). Additional sanctions may be sought before Brazilian Courts, such as (i) confiscation of assets, (ii) suspension of the company's activities, and (iii) prohibition of receiving tax breaks and other incentives. Corporations found guilty of corruption will also be required to pay compensation for damages.

Credit for compliance programs and for settlements in case of an investigation. The new law sets forth incentives for companies to adopt internal auditing and self-reporting procedures, as well as rules on ethics and corporate conduct. Adoption of "effective" compliance programs may result in the reduction of fines and other sanctions. Federal Government is required under the new law to issue regulations on the criteria to assess what an *effective* compliance program is.

Moreover, the law also provides that companies under investigation that cooperate with the authorities may be entitled to a reduction of the applicable sanctions.

Leniency program. Self-disclosure of corrupt practices and illegal conduct in public tenders by corporation may result in a reduction of up to 2/3 of the fine and immunity from other sanctions. Unlike the antitrust leniency program (Law No. 12,529/11), the new anti-bribery

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law does not extend the benefits of the leniency program to the individuals involved, which may still be liable under Brazil's Criminal Code and other statutes, such as the Public Tender Law. Furthermore, applying for leniency for corruption activity does not automatically ensure leniency under the antitrust law program in a bid-rigging case. Separate understandings with the Administrative Council for Economic Defense (Cade) would have to be pursued.

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