

BRAZIL'S OECD MEMBERSHIP BID INTENSIFIES SCRUTINY ON MODERN SLAVERY

The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises sets forth that companies shall “contribute to the elimination of all forms of forced or compulsory labor and take adequate steps to ensure that forced or compulsory labor does not exist in their operations”. Hence, Brazil’s bid to join the OECD, recently boosted by the U.S. support, brings along the need to increase efforts to repress forced labor or other forms of modern slavery in the country. This is already happening and has consequences to multinational companies with activities in the country.

Specifically, Brazil is trying to improve mechanisms that allow parties, such as individuals or human rights protection entities, to file complaints against multinationals and provide effectiveness to such complaints. The OECD’s National Point of Contact (NPC) is one of these mechanisms. The NPC is a government-supported office whose core duty is to advance the effectiveness of the OECD Guidelines. All OECD members and adhering governments must establish an NPC, and in the case of Brazil, that is the Ministry of Economy.

As part of the country’s recent efforts to gain OECD membership, the Ministry of Economy has increased the number of NPC staff and taken measures to raise public awareness on its activities. It has also submitted to public comments a revised Manual of Procedures of the NPC, with the intent to improve transparency on its operation.

These recent changes tend to raise awareness on the possibility of filing complaints before the NPC and give potential complainants a better knowledge on how to do it and what to expect from it. Complainants now know, for example, the mediation instruments that the NPC may adopt, as well as the expected timeframe for the proceedings. In addition, the sole fact that Brazil is in the process of becoming an OECD member might give potential complainants the expectation that their submissions will be thoroughly reviewed, as part of an effort by the country to show it is committed to foster compliance with the Organisation Guidelines. This tends to increase complaints to the NPC.

Although the NPC does not have investigative or punitive powers, the mere publicity of a complaint made before it may be enough to harm the reputation of companies charged with involvement in modern slavery. The use of sophisticated mediation proceedings by the NPC staff, however, may be a good opportunity for multinationals with activities in Brazil to prevent both litigation and further scrutiny on its practices in such a sensitive and relevant matter, as fighting modern slavery.

The draft Manual of Procedures submitted to public comments provides for a preliminary phase of the proceedings in which the identity of the company that figures as a defendant in a complaint is kept confidential. During this phase, the company may address the issues and facts raised in the complaint with the party that filed it, so as to ensure the matter is dealt with in a way that does not harm its reputation. It may also benefit from this confidential period to revise its own practices or those related to local businesses partners in order to effectively prevent modern slavery that may be taking place within its supply chain. These provisions reduce risks for companies and ease conformity with the highest standards of compliance programs increasingly demanded worldwide.

Overall, Brazil's attempt to access OECD membership is expected to result in closer scrutiny of practices by multinational companies active in the country. In this context, attention to modern slavery is a sensitive topic. It is, then, highly recommended that companies pre-emptively review their practices and those of their local business partners, so as to reduce risks related to the enlarged and sharpened mechanisms to fight modern slavery in the country.

Author:

Marcos Drummond Malvar
mmalvar@levysalomao.com.br