

Brazil's New Anti-Corruption Law Goes into Force

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On January 29, 2014, Brazil's sweeping new anti-corruption law, the Clean Companies Act (CCA), went into effect establishing, for the first time, liability for entities in Brazil that engage in bribery and related corrupt acts. Similar to the United States' Foreign Corrupt Practices Act (FCPA), the CCA prohibits companies operating in Brazil from directly or indirectly offering or providing an "improper advantage" to foreign or domestic public officials, including officials at international organizations. Unlike the FCPA, however, the CCA also prohibits the provision of facilitating payments. The law also has a separate provision relating to public contracts that prohibits companies from engaging in conduct, such as fraud or collusion, that reduces the competitiveness of or otherwise interferes in the public bidding process. The CCA also prohibits efforts to obstruct or interfere with investigations and prosecutions of proscribed conduct.

The new law applies to all legal entities operating in Brazil, regardless of their organization or structure. Under the law, corporations are strictly liable for the acts of both employees and agents, regardless of the existence of corrupt intent or management knowledge of the unlawful conduct. The law also imposes expansive joint and several liability on parent companies, subsidiaries, affiliated entities, and other members of the same consortium. Interestingly, while the law imposes successor liability in the case of mergers and acquisitions, the successor entity is only liable for fines and restitution for damages up to the value of the assets acquired or transferred.

In terms of enforcement, Brazilian authorities have a wide range of administrative and civil penalties at their disposal. Fines can range from 0.1% to 20% of the company's gross revenue, or, in the event that the gross revenue cannot be calculated, up to approximately \$25

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million. In particularly egregious cases, companies may be suspended or even dissolved. Additionally, violators can be banned from receiving incentives, subsidies, grants, donations, or loans from public entities for a period of one to five years.

The CCA also provides for substantial reductions in penalties under certain circumstances, and allows the governing authority to enter into leniency agreements with companies who self-report violations and cooperate with the investigating authorities thereafter. Companies that voluntarily disclose misconduct to the authorities can have their penalties reduced by up to two-thirds of the applicable amount. Companies who develop and maintain robust compliance programs to prevent the recurrence of misconduct are also subject to reduced penalties.

While the enactment of the CCA demonstrates the Brazilian government's commitment to strengthening its anti-corruption regime, it is too soon to tell how vigorously the new law will be enforced. Yet, given the breadth of the law and the potential for severe sanctions, entities operating in Brazil would be well advised to implement robust compliance processes and procedures to prevent violations and mitigate risk.