The 'next big thing' in global anti-corruption: The Brazil Clean Companies Act

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With the world's seventh largest economy by nominal GDP, and ranking seventh in terms of purchasing power parity, the "B" in "BRIC" countries — Brazil, Russia, India and China — is now making global waves through its revamped anti-corruption efforts. The landmark Brazil Clean Companies Act, which went into effect Jan. 29, addresses corruption as well as illegal acts involving public procurement. The law not just imposes civil liabilities, but also introduces administrative sanctions on private companies found to be benefiting from bribery involving government

In fact, the BCCA provides for administrative and civil strict liability for foreign or domestic corporations that promise, offer or give (directly or indirectly) any undue advantage to a public servant or a third person related to him or that fund efforts to use a third party to do so. The BCCA can be imposed on any company, as well as any foundation or association of entities or individuals who are domiciled or have a presence in Brazil, even if that presence is only temporary. The law considers any entity with a registered office, branch or other representation in Brazil to be subject to Brazil jurisdiction.

The BCCA takes a broad approach when defining who qualifies as a foreign public official, defining officials or agents as those inclusive of international public organizations and individuals at any level or sphere of a foreign state body, as well as those who are directly or *indirectly* controlled by a public authority of a foreign government. The law even defines those who qualify as foreign agents to include temporary workers, contractors and volunteers (or those who do not receive compensation) if they hold any position or job function with such a foreign

Following the lead of the United Kingdom's Bribery Act, companies subject to the BCCA may be held liable for violation thereof even though they had no knowledge of such violation committed by an employee or agent (and, unlike the Bribery Act, even if they had all the necessary compliance programs Moreover, the law imposes successor liability on companies, giving those companies contemplating M&A activities in Brazil an even more compelling reason to take the time and money to conduct thorough due diligence in advance of closing these types of deals.

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The sanctions for companies found guilty of violating the BCCA are considerable. The BCCA envisions fines ranging from 0.1 percent to 20 percent of the offending company's gross revenues and publication of the reproving decision. Additionally, penalized parties will find that many of the details of their resolution will be publically available via the new National Registry of Punished Companies, established under this law. Other penalties can include the loss of assets, rights or valuables directly or indirectly related to the wrongdoing; partial suspension or interdiction of activities; and perhaps most draconian of all, judges will have the discretion to compel the dissolution of the legal entity. WJ



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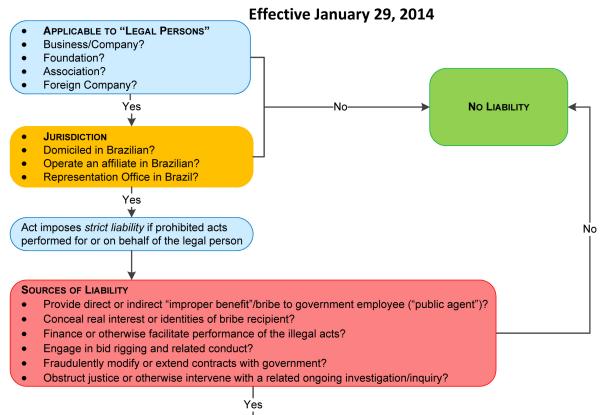
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LEI N $^{\circ}$ 12.846, DE 1 $^{\circ}$ DE AGOSTO DE 2013 (Brasil), in original Portuguese. See http://bit. ly/1muESig; Uncertified English translation of Law no.12,846/13isavailableathttp://bit.ly/P0m5wX.





BRAZIL'S ANTI-CORRUPTION "CLEAN COMPANIES ACT"



ADMINISTRATIVE LIABILITY

- Fine .1% 20% of the gross income of the fiscal year prior to the institution of the administrative proceedings or the benefit gained, whichever is greater
- Public Naming & Shaming Publication of adverse judgment in wide-circulation/ national circulation press (and at company's cost) and 30-day or more public posting of notice of adverse judgment in the business

CRITERIA FOR CALCULATION OF PENALTY

- Seriousness of the violation
- · Benefit gained or sought
- Extent to which the violation was completed
- Degree of injury or "negative effect" of the violation
- "Financial position" of violator
- Cooperation in the investigation
- Effectiveness of any internal controls, policies, and procedures

JUDICIAL LIABILITY

- · Loss of assets, rights, or amounts gained from illegal conduct
- Suspension/partial prohibition on operations
- Dissolution (if company was "habitually" used to facilitate or promote illegal acts or was used to conceal interests/identity
 of beneficiaries of the acts committed)

NOTES CONCERNING INDIVIDUAL LIABILITY

- Not excluded by Clean Companies Act
- Manager/administrator liability based on personal culpability

NOTES CONCERNING COMPANY LIABILITY

- Successor liability generally limited to fine and restitution
- Liability not extinguished by change in corporate form/ merger/divestiture
- Joint and several liability for misconduct by subsidiary/ parent/affiliate
- "Leniency agreements" based on company's cooperation