

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,¹ 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 officials.

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 entity.

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 in place). 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 publicly 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**

NOTES

¹ LEI Nº 12.846, DE 1º DE AGOSTO DE 2013 (Brasil), in original Portuguese. See <http://bit.ly/1muESig>; Uncertified English translation of Law no.12,846/13 is available at <http://bit.ly/P0m5wX>.



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BRAZIL'S ANTI-CORRUPTION "CLEAN COMPANIES ACT"

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