

foreign corrupt practices act lawflash

August 12, 2013

Brazil Enacts Anti-Corruption Law

Companies doing business in the country should evaluate their compliance programs to avoid the law's sanctions on violators.

On August 2, Brazilian President Dilma Rousseff signed Law No. 12,846/2013—unofficially called the “Anti-Corruption Law”—which will come into effect on January 29, 2014. The enactment of the Anti-Corruption Law comes long after the Organisation for Economic Co-operation and Development’s (OECD’s) 2007 recommendation that Brazil strengthen its corporate liability laws on foreign bribery. Brazil has been a party to the Anti-Bribery Convention of the OECD since 2000 and the United Nations Convention against Corruption since 2005. Brazil now joins a group of Latin American countries that have enacted laws to crack down on public corruption.

The Anti-Corruption Law will do the following:

- Forbid any Brazilian company to engage in corruption of government officials in Brazil or abroad, especially in connection with public bids
- Impose strict administrative and civil liability on companies for violations carried out by their directors, officers, employees, and other agents acting on their behalf
- Provide for joint and several liability of the parent company as well as any of the members of a joint venture or consortium that has breached the statute
- Establish a database of violators that will be prohibited from participating in further public bidding processes
- Allow companies to self-disclose violations in exchange for reduced fines and penalties

Brazilian legislators were not shy with respect to sanctions on violators of the Anti-Corruption Law, setting forth administrative fines of up to 20% of the gross revenue from the previous year of a company found guilty of corruption or up to BRL \$60 million (around USD \$30 million) if gross revenues cannot be ascertained. In addition, penalties may include disgorgement of benefits, suspension of activities, and even closure and dissolution of the violating company.

Implications

Organizations doing business in Brazil should ensure their anti-corruption compliance programs meet the elements of the U.S. Federal Sentencing Guidelines. By implementing and maintaining such a program, organizations can detect and prevent corrupt conduct. In addition, the Brazilian Anti-Corruption Law provides that enforcement authorities may consider the existence and strength of a company’s anti-corruption compliance program in evaluating sanctions. Similarly, in many other jurisdictions, including the United States, a strong anti-corruption compliance program is often considered by government authorities to be a mitigating factor in both the decision to bring an enforcement action and in the assessment of criminal and civil penalties.

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