CLIENT UPDATE

BRAZIL'S SENATE PASSES LONG-PENDING LANDMARK ANTI-CORRUPTION LEGISLATION

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On July 4, 2013, the Brazilian Senate took long-awaited action in passing Legislative Bill No. 6826/2010. If approved by President Rousseff, as expected, the new law will impose civil and administrative liability on corporate entities doing business in Brazil that engage in bribery of Brazilian or non-Brazilian public officials, as well as fraud in connection with public tenders. Upon approval, the law will become effective 180 days after publication in the Diário Oficial da União, the official gazette of Brazil's federal government, putting the effective date sometime in early 2014.[1]

Most notably, the bill includes provisions that would make corporate entities, as legal persons, liable for anti-bribery and other offenses under a framework similar to the common law doctrine of *respondeat superior* – whereby a corporation can be liable for the acts of its directors, officers, employees, and other agents acting on the corporation's behalf. The corporate liability provisions address, in part, long-standing OECD criticism that Brazil's anti-bribery regime did not comply with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The bill applies broadly to corporations, partnerships, and proprietorships, both profit and non-profit. Its expansive coverage includes non-Brazilian companies operating through branch or representation offices in Brazil.

[1] A copy of the legislation and its history before the Brazilian Congress may be obtained at: http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=466400.

Among other provisions, the bill provides for administrative and civil law judicial remedies against entities whose directors, officers, employees, or agents offer or pay bribes, or otherwise sponsor or fund such prohibited conduct. Consistent with the general features of Brazilian law, the bill does not impose corporate criminal liability (unlike the US Foreign Corrupt Practices Act and the UK Bribery Act).

Fines may be steep and run up to 20 percent of an entity's gross revenues in the year prior to that in which administrative proceedings are initiated. Various sanctions may be applied if a covered illegal act was committed for the benefit of the entity – essentially a form of strict liability. In the case of judicial proceedings, penalties could include loss of assets, debarment, injunctions, partial suspension of the entity's activities, and even dissolution of the offending entity. The legislation also contains provisions for successor liability for fines and restitution.

Significantly, the legislation contains no affirmative defense for having "adequate procedures" in place to prevent corruption, as the UK Bribery Act does for its corporate offense. However, businesses may take some comfort in provisions of the law that direct that sanctions be determined based in part on the business's pre-existing compliance program, remediation, and cooperation. The manner in which compliance programs are to be evaluated will be determined by specific regulations to be issued by the Federal Executive Branch. The legislation also authorizes regulators to enter into leniency agreements – akin to deferred prosecution and non-prosecution agreements – with entities demonstrating a basis for leniency.

First introduced in February 2010 by President Lula da Silva, the bill finally passed the Brazilian House of Representatives Special Committee on April 24, 2013, paving the way for the Senate's recent action. The passage of Legislative Bill No. 6826/2010 came after several weeks of public demonstrations and should be seen as part of an effort by the Brazilian government to expedite the implementation of measures designed to address ongoing concerns regarding corruption. The bill, if it becomes law, will add considerable force to the other laws, civil and criminal, which Brazil has had on the books for many years, but whose enforcement to date has yet to quell calls for legal reform and more aggressive enforcement.

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Please do not hesitate to contact us with any questions.

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