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framework

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Brazil

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Brazilian Anti- Corruption Law

Brazil: Compliance/legal framework

1. Anti-Corruption Law (Law 12,846/13)

- The Law applies to foreign companies doing business in Brazil and to Brazilian companies doing business in Brazil and worldwide.
- Legal entities are subject to strict administrative and civil liability, regardless of fault or intent.
- The Law defines offences broadly:
 - i. To promise, offer or effectively give, directly or indirectly, undue advantage to a public official or to a third entity related to a public official;
 - ii. To fraud, manipulate or otherwise interfere with public bids or public contracts;
 - iii. To finance, fund or sponsor, by any means, the offenses listed in the Law;
 - iv. To attempt to conceal or dissimulate, through intermediary individuals or companies, corrupt intent of the identity of the beneficiaries of corrupt acts;
 - v. To obstruct government investigations.

Brazil: Compliance/legal framework

1. Anti-Corruption Law (Law 12,846/13)

- The penalties are severe and may involve a significant financial burden, as well as substantially limit the ability for entities to do business in Brazil.
 - Administrative sanctions can amount up to 20% of company's gross revenues in the year prior to the beginning of the investigation;
 - Civil sanctions may include loss of assets or rights; interdiction of the company's activities; compulsory dissolution; prohibition of receiving funds, subsidies, loans or other incentives from public entities for up to 5 years;
 - Sanctions are cumulative to the obligation to fully reimburse the benefits illegally obtained or repair the damage caused.
- Effective Compliance programs are considered as mitigating factors.
- Successor liabilities applies.
- Leniency agreements may reduce fines and other sanctions.



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Car Wash Operation

Brazil: Compliance/legal framework

2. Operation Car Wash

- Corruption Scheme centered in Petrobras – March, 2014
 - Brazilian construction companies
 - Other Petrobras counter-parties
 - Politicians at state and federal levels – political parties
- Brazil's biggest corruption case. The investigation initially involved Petrobras, but currently involves the energy sector and several Brazilian companies and also banks.
- More than 200 people charged for several crimes: corruption, crimes against the international financial system, international drug trafficking, criminal association, money laundering and others.
- Allegations against the President of Brazil, the Speaker of the House, the leader of the Senate, a third of the cabinet and 90 members of the Congress.
- Odebrecht leniency agreement – almost 500 politicians allegedly involved.

Brazil: Compliance/legal framework

2. Operation Car Wash

- Over USD 15 billion – USD 6 billion have been recovered through criminal persecution or leniency agreements.
- Switzerland – as informed by Swiss AG:
 - CHF 1 billion confiscated – CHF 200 million returned to Brazilian authorities.
 - Over 60 criminal investigations – almost all against individuals.
 - Mutual Legal Assistance Treaty (MLAT) - Close cooperation and coordination of the law enforcement authorities.

Brazil: Compliance/legal framework

2. Operation Car Wash

- JBS S.A. – Brazilian meatpacking giant company– new factor.
- Largest private donor of political parties in Brazil – officially USD 130 million (2014) – funded the campaigns of 1/3 of the current Congress.
- Charged for paying bribes to over than 1,800 politicians in all levels – more than USD 200 million off records.
- Leniency agreement still sealed – USD 3,2 billion – largest agreement ever.
- Switzerland – allegedly several politicians received bribes through banks and structures (trusts and offshores) in the country.



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How to mitigate the risk?

Brazil: Compliance/legal framework

3. How to mitigate risks? Considerations from the Brazilian perspective

- Implementation of an Effective Compliance Program
- Regular update of third parties' due diligence – specially those who interact with Officials. Understanding if the company or the segment was involved in Operation Car Wash or other local operations.
- M&A Compliance Due diligence is essential for new ventures.
- Update risk assessment, policies and procedures considering the lessons learned from the companies involved in Operation Car Wash.
- Start in an urgent basis an internal investigation if individuals and companies from the group had conducted any potential improper payments.
- Monitor media to check Operation Car Wash and other federal police operation updates.



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Thank You!

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