

Brazil President Issues Decree Implementing Anticorruption Law

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The Decree provides that investigations of corruption in violation of the CCA are not conducted by a central authority, but rather by the government entity alleged to have suffered from corrupt conduct (or the minister of state, where necessary). Specifically, the Decree establishes an administrative process, the Processo Administrativo de Responsabilização (PAR), which governs the procedure for such investigations. Investigations may, but are not required to, include a preliminary phase that is confidential and nonpunitive in nature and must be completed within 60 days of initiation (extensions are permissible). If a formal proceeding is initiated, the Decree provides for the appointment of a committee to conduct the investigation. The Decree also gives entities accused of conduct violating the CCA 30 days after the initiation of formal PAR proceedings to submit a written defense and identify evidence in support thereof. And, notably, formal PAR proceedings must be concluded within just 180 days from their start (again, extensions are permissible).

Additionally, the Decree sets forth specific rules for calculating fines resulting from a PAR determination of liability. Fines will be based either on an assessment of certain aggravating and mitigating factors and a percentage of an entity's gross revenues from the prior fiscal year or the value of the benefit obtained or sought through misconduct. Fines are capped at the lesser of 20 percent of an entity's prior fiscal year gross revenues or three times the value of the benefit obtained or sought through the misconduct.

Importantly, and in contrast to the FCPA, the Bribery Act and other international anticorruption enforcement laws, the Decree also specifically delineates steps that may be taken by offending entities to lessen or eliminate penalties. The Decree provides that the investigating authority may enter into a "Leniency Agreement" with an accused company where the entity: (i) states its interest in cooperating with an investigation, (ii) has fully ceased

involvement in improper conduct, (iii) admits participation in the improper conduct, (iv) cooperates fully and permanently in the investigation, and (v) provides information and/or documents related to the improper conduct.

The Decree provides that PAR proceedings are the means of resolving an allegation and subsequent investigation of conduct violating the CCA. Brazilian courts also may enforce a levied fine or a Leniency Agreement. Given the infancy of the Decree, it is difficult to know how zealously Brazilian officials will enforce the CCA. However, with 10 resolved and at least 10 pending FCPA investigations arising out of Brazil, companies and individuals doing business within the country must consider the risk that their business could be scrutinized under both foreign and now local anticorruption laws, and take necessary measures to ensure their compliance with the same.

Categories

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