

The Road to a Corruption Overhaul
Brazil revises its foreign bribery bill making rules more clear for companies

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In January, FCPAméricas reported on how Brazil is currently considering an overhaul to its foreign bribery law (see [Another BRIC in the Anti-Corruption Wall](#)). The post described key features of the draft bill under consideration by the Brazilian Congress that would dramatically strengthen the law. The post noted how this development is happening at a time when Brazilian multinationals are going global and confronting foreign bribery risks of their own (see [Embraer's current corruption issues](#)), and corruption at home is under the spotlight (the President's administration has lost a [seventh Minister](#) to corruption allegations since the last post).

Now, a Special Committee created by the Brazilian Congress to analyze bill 6.826/2010 has recently presented a [revised draft](#) that bolsters certain key provisions and keeps other significant ones the same. The House aims to vote on the legislation before July 2012.

The added clarifications and detail, described below, will surely help companies build their compliance strategies in Brazil. We have the Anti-Corruption and Compliance Committee of the Brazilian Institute for Business Law ([Ibrademp](#)) to thank for some of these changes. It has been active in testifying before Congress to help clarify the bill. Mr. Carlos Henrique da Silva Ayres and Mr. Bruno Maeda, co-chairs of the Ibrademp Committee, see the changes as important improvements to the original version. They say:

The fight against corruption depends not only on the government's ability to detect and sanction violations, but also on the efforts of the private sector to prevent wrongdoing and develop a culture of positive behavior. The amendments enhance the role of compliance programs and stimulate companies' cooperation with enforcement authorities. These are features that currently do not exist in the Brazilian anti-corruption arena, and are welcome developments for companies, government, and society.

Here are some highlights of the revised bill:

Corporate Liability. FCPAméricas first reported how the original bill established direct civil liability for corporations and made them liable for the acts of their directors, officers, employees, and agents under the theory of *respondeat superior*. These were indeed dramatic developments in a country where the notion of corporate liability has received only limited recognition. The revised draft bill keeps these provisions in place.

In addition, we note that the new law would not only apply to bribery of foreign public officials, but local officials as well. Thus, it should impact not only Brazilian companies doing business in a foreign country, but also the Brazilian subsidiaries of foreign companies doing business in Brazil.

Sanctions. The original bill created harsh sanctions, with fines ranging between 1% and 30% of the company's gross revenue in the previous year. The revised bill changes the sanctions in two significant ways. First, the new range is reduced to 0.1% - 20%. This change is due to the fact that Congress just passed a new antitrust law with a 20% limit, and it wanted to standardize the two laws. Second, the amendments significantly increase the range of fines for situations in which it is not possible to determine the gross revenue of a company. Before, they ranged from R\$6,000 to R\$6 million. Now, they range from R\$6,000 to R\$60 million.

Voluntary Disclosure. The amendments clarify and boost the voluntary disclosure program, which should be a welcomed change for companies. In the earlier version, companies that self reported were granted some benefit, but the bill did not make clear how much or under what conditions. The revised rules clarify the mechanism.

They create a specific, pre-determined, range of credit that is available. By self-reporting, the company can reduce fines up to 66%. All other sanctions, except restitution, will be excluded from this calculation.

The bill also lists specific criteria that a company must meet before it can benefit from disclosure. The rules require that:

- i. the company is the first to come forward and confess its participation in the unlawful practice;
- ii. the company ceases its involvement in the unlawful practice;
- iii. at the time the company comes forward, public authorities do not have sufficient information about the illegal activity to ensure the condemnation of the company; and
- iv. the company agrees to fully cooperate with the investigation.

Based on this revised language, it appears that, even though the government has already started an investigation, a company can still benefit from self-disclosure if authorities do not yet have sufficient information about the activity.

These modifications are sure to give companies much more comfort in choosing to disclose wrongdoing, but some questions remain. For example, it is not clear whether companies are protected from being sanctioned under different statutes for the same conduct if they come forward. Rules governing conflict-of-laws in Brazil are complicated and require lengthy and sometimes unpredictable legal analyses.

Compliance Programs. The previous version of the bill stated that the government should take into account a company's compliance program when determining sanctions. But its description of the specific types of programs that would deserve credit was vague. The bill only said that companies would benefit from "the existence of internal integrity mechanisms and procedures, audits, and incentives to report violations, as well as the effective application of codes of ethics and conduct within the company."

The revised bill addresses this too. It states that the Brazilian federal government will create specific parameters to guide evaluation of these procedures by enforcement authorities. Maybe it will look to [Attachment Cs of Deferred Prosecution Agreements](#) in the United States for guidance? Maybe it will consider [Chapter Eight of the U.S. Federal Sentencing Guidelines](#)? In any event, guidance appears to be on its way.

With these changes, the Brazilian Congress appears to be responding to developments in international law in addressing foreign bribery. They seem to be taking a lesson from the United States, the UK, Canada, and other countries that are finding ways to work with corporate entities as partners, not enemies, in the fight against international corruption. Indeed, these are exciting new developments.

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