

## Two key Brazilian regulators have entered into a cooperation agreement to fight transnational corruption and cartels

The Brazilian Competition Authority, or the Administrative Council for Economic Defense (CADE), and the Ministry of Transparency, Supervision and Comptroller-General (CGU) will now formally exchange information and documents among themselves as part of a joint effort to increase the prosecution of Brazilian and foreign companies involved in corruption and/or cartels. This cooperation was materialized by [Joint Ordinance No. 4](#), published in the *Official Gazette of Brazil* on 1 June 2018.

According to Joint Ordinance No. 4, the CADE will share with the CGU information and documents related to any incident of transnational bribery of which it is aware and the CGU will provide information in connection with any anti-competitive conduct. Each authority will share information regarding potential wrongdoing as soon as the conduct is identified (i.e., before the conclusion of the investigation). All documents and information exchanged among the authorities must be treated as confidential.

This cooperation should increase enforcement of both Brazil's anti-corruption and antitrust laws given that bid-rigging combined with corruption is a hot topic and a clear priority for the CADE, which is reviewing dozens of cases linked to Operation Car Wash (potentially more than 30 investigations are under investigation before the CADE, including both confidential and public investigations).

In addition, companies and enforcement agencies have self-disclosed or named Brazil 36 times (i.e., the most mentioned country) in disclosures about ongoing Foreign Corrupt Practices Act (FCPA) related investigations, according to the latest data from [FCPA Tracker](#), which is a strong indicator that U.S. authorities are also looking at transnational corruption involving Brazil.

Transnational bribery is defined in Article 2 of the Joint Ordinance No. 4 as the "offer, promise or payment of money or any other undue advantage, directly or through third parties, by a Brazilian or foreign company, with headquarters, branch or representative office in Brazil, to a foreign public official, to obtain an advantage that will damage the foreign public administration."

Under the Brazilian Anti-corruption Law, legal entities are strictly liable for corrupt practices. Sanctions include

- fines of up to 20 percent of a company's gross revenue in the year prior to the initiation of the investigation (or R\$6,000 to R\$60 million if it is not possible to determine the company's revenues); and
- an obligation to publish the decision that applied the fine in a newspaper. If the conduct also included a violation of the Public Procurement Law in Brazil, an entity can also be barred from participating in future bids or from executing agreements with public bodies, which significantly impacts the business of subject companies due to the importance of public procurement contracts in Brazil.

Other sanctions include

- confiscation of the subject company's assets;
- suspension of the subject company's activities or the mandatory dissolution of the entity itself; and
- prohibition from receiving incentives, subsidies, grants, donations, or loans from public bodies, public financial institutions, or those companies controlled by the public authorities for a prescribed period of time.

Under the Brazilian Antitrust Law, the CADE can impose fines from 0.1 percent to 20 percent of the gross revenues of a company, group of conglomerates, earned in the year before the initiation of the proceeding before the CADE, in the business line where the violation took place. The fine will never be lower than the advantage obtained with the conduct in cases where it is possible to estimate the company's advantage with the conduct. Additional sanctions can also be applied to the legal entity, as

- the obligation to publish the CADE's decision in a newspaper of wide circulation;
- a prohibition on contracting with financial institutions and participating in biddings held by public bodies;
- a split up of the company or a divestiture of certain assets;
- a prohibition on granting an arrangement for payment of tax in installments; and
- individuals involved in the conduct may also be fined in 1 percent to 20 percent of the fine imposed on the legal entity.

Should you require more information, please contact us.

## Contacts



**Isabel Costa Carvalho**  
Partner, São Paulo  
T +55 11 3074 3501  
[isabel.carvalho@hoganlovells.com](mailto:isabel.carvalho@hoganlovells.com)



**Kathryn (Katie) Hellings**  
Partner, Washington, D.C.  
T +1 202 637 5483  
[kathryn.hellings@hoganlovells.com](mailto:kathryn.hellings@hoganlovells.com)

**Rafael Szmid**  
Senior Associate, São Paulo  
T +55 11 3074 3506  
[rafael.szmid@hlconsultoria Ltda.com.br](mailto:rafael.szmid@hlconsultoria Ltda.com.br)

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