

## Brazil and Anti-Corruption Legislation

As one of the world's largest energy producing countries, many US companies have subsidiaries in Brazil, which are subject to the Foreign Corrupt Practices Act (FCPA). Most of these companies have translated versions of the US FCPA compliance program. Such translations often disregard the size, nature, and particularities of Brazilian business, as well as the local risks and legal requirements pertaining to the Brazilian subsidiaries. Although these programs add value to companies, provide more security to investors and avoid reputational damage, aside from other benefits, they are mostly implemented by Brazilian subsidiaries of American companies subject to the FCPA. It is unusual to find a Brazilian company not subject to the FCPA that has a compliance program in place.

In a recent article by entitled, "*Compliance in Brazil: Current and Future Perspectives*" published in the **International Law Enforcement Reporter**, Brazilian attorney **Carlos Henrique da Silva Ayres** discussed legislation introduced in Brazil last year which is designed to require Brazil to comply with international agreements for combating bribery to which Brazil is a signatory. This legislation, designated as draft bill No. 6.826/2010, addresses civil and administrative liability for corporations for corrupt acts relating to Brazil's national and foreign public administration.

This legislation should bring Brazil directly into the international mainstream regarding legislation to prevent bribery and corruption. In his article Ayres details some of the significant provisions of the legislation, as follows:

- **Respondeat Superior** - The legislation embraces a notion that legal entities will be held liable for acts committed by any of its agents or any person who may represent a Brazilian entity. This is significant because under Brazilian law, with the exception of environment-related offenses, corporations cannot be held criminally liable for the acts and omissions of their employees and agents.
- **Affirmative Defense** - The legislation has something akin to the "adequate procedures" of the UK Bribery Act. Ayres notes that the bill provides "the existence of mechanisms and internal integrity procedures, audit and incentive denunciation of irregularities in applying the code of conduct and ethics within the legal entity," in addition to other factors, will be taken into consideration when determining the sanctions to be applied.
- **Credit for Cooperation** - The legislation provides that "the cooperation with investigation of infractions, through means such as communication of the illegal act to the public authorities before the initiation of a proceeding, and the celerity to provide information in the course of the investigation" will also be taken into consideration when determining the sanction to be applied.
- **Penalties** - The legislation has penalties, both for corporations and individuals. These include fines against corporations of between 1% to 30% of the company's gross revenue

and debarment from public contracts, among other sanctions. Individuals could face jail time of up to 12 years per offense.

Ayres end his article by observing that this proposed legislation is another indication that Brazilian authorities are closing ranks in the international effort against bribery and corruption. Brazil is a signatory to three international conventions against corruption: The United Nations Convention against Corruption; The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and The Inter-American Convention Against Corruption. Brazilian authorities have cooperated with representatives from the US Department of Justice (DOJ) and other anti-bribery and anti-corruption authorizes in international investigation. If passed, draft bill No. 6.826/2010 will likely continue develop in Brazil.

*Carlos Henrique da Silva Ayres is an attorney in at Trench, Rossi e Watanabe Advogados, a Brazilian law firm associated with Baker & McKenzie. He specializes in white collar crimes and compliance matters.*

*This publication contains general information only and is based on the experiences and research of the author. The author is not, by means of this publication, rendering business, legal advice, or other professional advice or services. This publication is not a substitute for such legal advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified legal advisor. The author, his affiliates, and related entities shall not be responsible for any loss sustained by any person or entity that relies on this publication. The Author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author. The author can be reached at [tfox@tfoxlaw.com](mailto:tfox@tfoxlaw.com).*

© Thomas R. Fox, 2011