



Regulatory: Brazil's changing regulatory winds

A focus on anti-corruption in Brazil means companies should assess compliance programs

BY [JAIME GUERRERO](#)

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Multinational companies and their executives operating in Brazil have increased cause to tread carefully with respect to anti-corruption compliance. In March, Brazilian authorities filed criminal charges against Chevron Corp. and Transocean Ltd. executives in connection with a relatively minor November 2011 oil spill, and a Brazilian judge barred the executives from leaving the country in order to face the charges. Brazil's recent actions to enforce its laws and detain foreign executives, in combination with Brazilian President Dilma Rousseff's demonstrated anti-corruption efforts, indicate a new regulatory age in Brazil. President Rousseff's government appears poised to enforce its domestic anti-corruption laws against multinational companies and executives, thus raising the stakes for operating in Brazil. It is therefore imperative for companies operating in Brazil to have contingency plans in place to deal with the changing regulatory winds.

The judge's barring of the oil executives was a rare, if not unprecedented move. The oil spill amounted to between 2,400 and 3,400 barrels, less than 0.1 percent of the 2010 BP spill in the Gulf of Mexico. Although primarily environmental crimes are alleged, at least one individual, the president of Chevron's Brazil operations, also was charged with obstructing the government's investigation of the spill. The Brazilian government's action in the Chevron matter coincides with a strong domestic anti-corruption crusade by President Rousseff. Since coming into office in January 2011, she has made domestic anti-corruption a cornerstone of her administration, and as a result, her popularity has increased. President Rousseff has already dismissed several ministers and other high-ranking government officials for alleged corrupt behavior, in some cases based on what has been called little more than the appearance of impropriety.

Given Brazil's willingness to flex its enforcement muscles on the international stage and President Rousseff's stand against domestic corruption, it is reasonable to expect that Brazil may also become more aggressive in enforcing its anti-corruption law against multinational corporations. Brazil's anti-corruption laws are similar to the Foreign Corrupt Practices Act (FCPA), sharing the basic goal of preventing undue influence of government officials for personal or corporate gain.

This all comes at a time when Brazil's growing economy is attracting an ever-increasing amount of foreign investment, and when Brazil is preparing to host the 2014 World Cup and the 2016 Summer Olympics. Indeed, recent estimates have Brazil as the top recipient of foreign direct investment in Latin America. This strong investment track record, however, comes with a challenging compliance environment, as corruption is ranked as among the most "problematic factors" in doing business in Brazil. Multinational corporations operating in Brazil, whether directly, through a subsidiary or with a joint venture partner, should take basic precautions to prepare for the potential increased regulatory risk by:

- Assessing current operations and anti-corruption compliance procedures to ensure that protocols are in place for identifying and responding to existing and anticipated compliance challenges
- Preparing or updating crisis response protocols for responding to Brazilian investigations and enforcement actions
- Employing in-house counsel, or retaining external counsel who are well-versed in local anti-corruption laws, that can assist the company and its executives when facing enforcement actions against the company or detention of its executives

Although it remains uncertain whether Brazil will in fact become more aggressive in enforcing its anti-corruption laws in the corporate context, this may not be the best time to be unprepared.

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