

Shooting for Effective Anti-Corruption Compliance: A Look at Recent Developments in Brazil

A recently disclosed bribery scandal related to the 2014 FIFA World Cup in Brazil, along with other anti-corruption developments in Brazil, has reinforced the importance of implementing effective compliance policies and procedures. On March 22, 2015, Bilfinger released a statement that it was conducting an internal investigation into allegations that employees of Mauell, its Brazilian subsidiary, paid bribes to public officials and employees of state companies in Brazil. Mauell supplied monitor walls and software for security control centers, which oversaw the flow of traffic at the World Cup. In total, the orders were worth approximately \$6.5 million. In its statement, Bilfinger confirmed that the suspicions were substantiated. Bilfinger had previously entered into a deferred prosecution agreement with the U.S. Department of Justice on December 9, 2013, and paid a \$32 million penalty relating to allegations that it had bribed Nigerian government officials to obtain and retain contracts with respect to a \$387 million oil and gas project.

Bilfinger's disclosure comes at a time when the Brazilian government appears to be ramping up its anti-corruption enforcement activity. Brazil recently implemented a new anti-corruption statute, which took effect in January 2014. The new statute, often referred to as the Clean Company Act (CCA), was modeled after the U.S. Foreign Corrupt Practices Act and other similar laws. Last week, President Dilma Rousseff signed a presidential decree which issued regulations pursuant to the CCA. The new regulations establish the factors for determining the total penalty under the CCA, up to 20% of the company's gross revenues during the prior fiscal year or three times the advantage received from the misconduct. Factors include the value of the company's government contracts and knowledge of the improper conduct. The CCA regulations also provide Brazil's Federal Comptroller General with the exclusive jurisdiction to enter into leniency agreements with subjects of investigations and set forth criteria for assessing companies' compliance programs.

As part of their crackdown on anti-corruption activity, Brazilian authorities are conducting an extensive probe into state-owned oil company Petrobras. The scandal broke in March 2014 when former Petrobras director Paulo Roberto Costa was arrested due to allegations of corruption spanning the previous ten years. Over the next few months, allegations emerged that engineering and construction companies received inflated contracts from Petrobras, diverting around \$3.8 billion from the energy company, and provided kickbacks to Petrobras executives and politicians. Corruption charges have been filed against over a hundred individuals, including Petrobras executives, contracting firms' executives, and politicians. Although President Rousseff is not being investigated, she presided over the Petrobras board of directors during a portion of the alleged scheme and has faced calls for ouster.

In recent years, other companies have been subject to enforcement actions relating to allegations of corruption when conducting business in Brazil. On December 11, 2014, Dallas Airmotive was fined \$14 million for allegedly bribing Brazilian air force and state officials, among others, in order to win government contracts. The previous month, SBM Offshore received a \$240 million penalty from Dutch authorities due to allegations that it paid commissions to sales agents, which, in turn, were used to pay for services such as transportation and education for government officials.

Brazil represents a huge target for foreign companies and investors, receiving \$62 billion in foreign direct investment in 2014. With the Olympics in Rio de Janeiro rapidly approaching in 2016, Brazil will continue to present myriad opportunities for foreign firms to invest over the coming years. Nevertheless, Bilfinger's recent disclosure makes it clear that corruption relating to global sporting competitions is not limited to direct payments to governing bodies. Rather, all forms of contracting which surround events such as the World Cup and the Olympics may pose a risk of corruption to investors.

Given these significant challenges and the vast opportunities of the Brazilian market, fighting corruption in Brazil will continue to be a priority of law enforcement, both in Brazil and beyond. Now is the time for companies doing business in Brazil to ensure that they have implemented an effective anti-corruption compliance program in that country, including a review of procedures, documents, and payments surrounding contracting and the diligence of third-party intermediaries and agents.

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