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Brazilian Federal Supreme Court Decision May Invalidate Key Operation Car Wash Efforts, but Enforcement Efforts Show No Sign of Slowing Down

A recent Brazilian Supreme Court decision may jeopardize the largest anti-corruption enforcement action in modern history—Operation Car Wash.

On March 14, 2019, in a 6-5 decision, the Brazilian Federal Supreme Court (the “Supreme Court”) confirmed that crimes relating to bribery and corruption must be tried by Brazil’s Electoral Court where those crimes relate to electoral crimes (the “March 14 Decision”).¹ This alters the status quo, as Brazilian federal common courts (the “Common Courts”) have tried these cases historically due to the perception that they were better equipped to handle corruption and bribery investigations than the electoral courts.² Some commentators believe that the March 14 Decision could invalidate past convictions under the Brazilian Constitution, resulting in re-trials for some or all Operation Car Wash defendants tried and convicted in the Common Courts.³

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The March 14 Decision arises out of a jurisdictional challenge raised by two targets of the Operation Car Wash anti-corruption probe, Eduardo Paes and Pedro Paulo.⁴ Paes, a former Rio de Janeiro mayor charged with accepting over \$13 million in bribes and illegal campaign contributions in connection with Operation Car Wash, and Paulo, another former Brazilian politician facing similar charges, argued that the Brazilian constitution and Electoral Code required that their trials take place before the Brazilian electoral courts, as opposed to the Common Courts.⁵ In siding with Paes and Paulo, the Supreme Court affirmed the Electoral Court’s *exclusive* jurisdiction over crimes, such as bribery and fraud, when directly connected to the electoral process.⁶ The five dissenting ministers of the Supreme Court argued that while actual violations of the Electoral Code must be brought in the electoral courts, common crimes only related to Electoral Code violations could be tried in the Common Courts.⁷

The Supreme Court’s decision is already directly causing a direct impact on Operation Car Wash. On March 19, 2019, the Second Panel of the Supreme Court ordered that an inquiry into former senator Luiz Lindbergh Farias Filho be transferred from the Common Court to the Rio de Janeiro Electoral Court, signaling that investigations involving electoral malfeasance will be exclusively tried in electoral courts moving forward.⁸

Despite this setback, Brazilian federal prosecutors are not slowing down. A mere week following the March 14 Decision, former Brazilian president Michel Temer was arrested on bribery and money laundering charges linked with Operation

¹ See [“Plenary of the Supreme Court reaffirms the competence of the Electoral Court to try common crimes related to electoral crimes,”](#) Supremo Tribunal Federal (Mar. 14, 2019).

² Brad Brooks, [“Brazil Supreme Court decision seen as ‘blow’ to Car Wash probe,”](#) Reuters.com (Mar. 14, 2019).

³ Ernesto Londono, [“Former President Michel Temer of Brazil is Arrested in Bribery Probe,”](#) NYTimes.com (Mar. 21, 2019).

⁴ Andre Shalders, [“Why the decision in the STF on Thursday generates the fear of ‘end of the Lava Jet’?”](#) bbc.com (Mar. 14, 2019).

⁵ See “Plenary of the Supreme Court reaffirms the competence of the Electoral Court to try common crimes related to electoral crimes,” *supra* note 1.

⁶ See [“Brazil Supreme Court ruling complicates Lava Jato probe: Top court rules that some corruption cases in the five-year old Lava Jato investigation will be handled by electoral courts, whilst politicians accuse prosecutors of political agenda,”](#) batimes.com (Mar. 18, 2019).

⁷ See Plenary of the Supreme Court reaffirms the competence of the Electoral Court to try common crimes related to electoral crimes,” *supra* note 1.

⁸ [“2nd Court orders referral of investigation against former senator Lindbergh Farias to the Electoral Court of RJ,”](#) Supremo Tribunal Federal (Mar. 19, 2019).

Car Wash. Brazilian federal prosecutors allege that Temer ran a scheme that accepted \$470 million bribes in return for lucrative government contracts involving a Brazilian power plant.⁹

Further, the significance of the Supreme Court's ruling has the potential to be significantly reduced by Justice Minister Moro's newly proposed legislation, as well as separate legislation proposed by senator Olimpio Gomes, both of which would amend the Electoral Code to strip the electoral courts of jurisdiction in Operation Car Wash-related investigations.¹⁰

Given these recent developments and the dramatically increased cooperation between Brazilian, U.S., and E.U. authorities, foreign investors and multinationals doing business in Brazil should continue to closely track news related to the Operation Car Wash investigation and Brazil's numerous other corruption-related investigations in the months to come. In this new era of heightened regulatory scrutiny, companies and investors with ties to Brazil should also consider implementing anti-corruption risk assessments, enhancing compliance programs, and continually monitoring their businesses for potential red flags.

⁹ Waithera Junghae, "[Brazilian prosecutors decry Supreme Court ruling as judge suspends Petrobras settlement](#)," Global Investigations Review (Mar. 15, 2019).

¹⁰ See "[The 'anti-crime' package and the criminal typification of 'slush fund'](#)," Lexology.com (Feb. 22, 2019); "[Under pressure, Moro makes changes to anti-crime bill](#)," Valor International (Feb. 7, 2019); Brad Brooks, "[Brazil Supreme Court decision seen as 'blow' to Car Wash probe](#)," Reuters.com (Mar. 14, 2019).