

December 2020

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Key Takeaways for Businesses from Brazil's Newly Announced 5-Year Anticorruption Plan

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On December 9, 2020, Brazil released a 56-page [Anticorruption Plan](#) that sets the agenda for anticorruption efforts at the Executive level for the next five years. The plan contains 142 actions with defined deadlines and goals that include increasing anticorruption enforcement and interagency cooperation, establishing new tools and resources to promote transparency and government accountability, and providing additional guidance regarding critical aspects of the Clean Companies Act, including the criteria for assessing compliance programs and calculating cooperation credit as part of leniency agreements. Companies doing business in Brazil need to understand the key provisions of the Anticorruption Plan and the potential impacts they could have on enforcement risks, structuring compliance programs, and conducting internal investigations.

The Anticorruption Plan was announced during the opening of an anticorruption conference hosted by Brazil's Comptroller-General Office ("CGU"), the agency with overall authority for coordinating anticorruption enforcement in Brazil. According to a [government press release](#), the Anticorruption Plan was developed by an interagency committee selected by President Bolsonaro representing nine government agencies. Notably absent from the committee was the Public Prosecutor's Office (the "MPF"), which has been a driving force in Brazil's efforts to fight corruption, including during Operation Car Wash.

Of the 142 actions contained in the plan, 55% relate to prevention, 24% to detection, and 21% to deterrence. A majority of the actions (76 total) are assigned to the CGU. CGU Chief Wagner de Campos Rosário stated that 11 actions will be implemented this year, with a target to implement 80% of the actions by the end of 2022. An overarching objective of the plan is to improve interagency communication and knowledge sharing within Brazil's various federal agencies.

Some of the key actions contained in the Anticorruption Plan include the following:

- Transparency Measures
 - Publish invoices (*notas fiscais*) for government purchases on a transparency portal to allow for increased transparency on pricing. (CGU Action 2; Target: 7/31/2021)
 - Reform and standardize the collection of information regarding Politically Exposed Persons ("PEPs") made available to the public. (CGU Action 4; Target: 12/31/2021)

- Publish the calendars and/or schedules of federal officials on a government portal. (CGU Actions 15-18; Target: 3/31/2021-12/31/2022)
- Lobbying and Public Integrity
 - Propose legislation to regulate the practice of lobbying federal authorities on behalf of private interests. (CGU Action 25; Target: 3/15/2021)
 - Plan and implement a “Public Integrity System for Federal Agencies.” (CGU Actions 27-30; Target: 12/31/2020-12/31/2021)
- Revised Guidance on Compliance Programs in the Private Sector
 - Update guidelines for effective compliance programs in the private sector, including producing a framework for analyzing the effectiveness of compliance programs for companies involved in improper conduct. (CGU Actions 33-34; Target: 12/31/2021)
- Whistleblowers
 - Reform the federal whistleblower website to implement machine-learning and other tools to triage whistleblower complaints more effectively. (CGU Action 35; Target: 6/30/2021)
 - Implement legislation and administrative measures to enhance protections for whistleblowers. (CGU Actions 39-42; Target: 3/16/2021- 12/31/2021)
 - Launch a public campaign to educate the public on the whistleblower channel. (CGU Action 43; Target: 12/31/2022)
- International Cooperation
 - Publish an update on Brazil’s compliance with international anticorruption treaty obligations. (CGU Action 44; Target: 6/30/2021)
 - Prepare a study with recommendations for increasing cooperation and information sharing with other countries in Latin America and the Caribbean. (CGU Action 45; Target: 12/31/2022)
- Investigations
 - Increase resources for forensic data analysis in support of investigations. (CGU Action 51; Target: 12/31/2022)
 - Create guidelines for interagency cooperation and decision-making for ongoing investigations. (CGU Action 52; Target: 12/31/2022)
 - Create investigation manual for public corruption matters and enhanced training for Federal Police (*Polícia Federal*). (PF Actions 1-2; Target: 12/31/2021)
- Leniency Agreements

- Propose legislation to amend the law governing leniency agreements (Decreto nº 8,420 / 2015) to improve and clarify provisions relating to general principles, cooperation with other bodies, and other aspects. (CGU Action 70; Target: 6/30/2021)
- Provide enhanced guidance to the public with practical examples and hypotheticals through a government portal. (CGU Action 72; Target: 6/30/2021)
- Propose enhanced criteria regarding the applicable discounts available for cooperation. (CGU Action 74; Target: 6/30/2021)

Companies doing business in Brazil should remain attuned to these initiatives and the changes in priorities and enforcements that they may bring. In particular, companies should consider the following points in connection with the new Anticorruption Plan:

- **New Resources for Due Diligence and Investigations.** Companies should monitor proposed enhancements to existing public registries for PEPs and the creation of new portals proposed under the Anticorruption Plan, including for public procurement invoices and access to public officials' meeting schedules. These portals have the potential to serve as important resources for performing third-party diligence, and there will be an expectation that companies will appropriately integrate these new tools into their compliance programs. Additionally, these new resources and available data may prove useful in the context of conducting internal investigations.
- **Potential for Increased Enforcement Arising from Whistleblower Channel.** The Anticorruption Plan reports that the unified whistleblower/complaint portal, Fala.br, is already in use by more than 2,000 Brazilian institutions, and that the data generated is "essential" for identifying potential fraud and irregularities. The proposal to implement AI tools to improve the triage of significant complaints could result in this channel becoming a more significant source of enforcement actions in the future. This development also highlights the importance for private companies to maintain and manage their own internal reporting channels effectively. It is not uncommon for a whistleblower to raise a potential concern internally first, but resort to an external complaint channel when his or her concern has not been adequately addressed in a timely manner.
- **Increased Guidance for Compliance Programs and Leniency Negotiations.** Under Brazil's Clean Companies Act, companies subject to an enforcement action can receive credit for an effective compliance program. The CGU will be updating CGU Regulation (*Portaria*) 909/2015, which currently defines how the government will evaluate a compliance program for purposes of receiving such credit. It will be important for companies to monitor any changes to this guidance in order to ensure that their compliance programs meet government standards and will qualify for credit. Additionally, the proposed increased guidance regarding cooperation discounts and leniency agreements more generally will be important to any company currently investigating issues in Brazil and/or considering making a self-report to Brazilian authorities.
- **Continued Unknowns Regarding MPF Role in Interagency Cooperation.** As noted in our [August 2020 alert](#), the MPF was not a signatory to a technical cooperation agreement announced in August 2020 that centralized authority for negotiating leniency agreements with the CGU and the Attorney-General's Office (the "AGU"). The MPF is also conspicuously absent from the Anticorruption Plan. This raises continued questions regarding the level of cooperation

and coordination between the MPF and the executive enforcement agencies (principally, the CGU and AGU) going forward.

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