

# Brazilian Anticorruption Law

Petro-Victory Energia Ltda.

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# Our Agenda

- Brazilian Anticorruption Law - BAL
- Unlawful Conduct
- Sanctions - Administrative Penalties
- Sanctions - Civil Penalties

# Our Agenda

- Penalties Factors
- Leniency Agreement
- BAL and Compliance
- Case Study

# Brazilian Anticorruption Law - BAL



# Brazilian Anticorruption Law - BAL

- Strict liability - Companies can withstand the sanctions without any discussion regarding its intention to commit the acts of corruption
  - This liability will remain in case of mergers and acquisitions
- Applicability - Brazilian entities, even when abroad, and foreign entities, who have an office, representation or branch in Brazil
- Third-party responsibility - Company can be liable for third-party acts, if those acts provided a gain or benefit for the Company

# Unlawful Conduct



**INTERNATIONAL  
ANTI-CORRUPTION  
DAY**

# Unlawful Conduct

- To promise, offer or give, directly or indirectly, an undue advantage to a public official, or to a related third party
- To fund, sponsor or endow any acts provided by the BAL
- To use an intermediary to hidden or conceal the interests or the identity of the beneficiaries
- To create obstacles to investigations or audits by public officials or entities

# Unlawful Conduct

- Against public bids and contracts
  - To practice several acts involving bid rigging
  - To obtain, by an unlawful manner, undue benefit or advantage, in relation to contracts celebrated with an official party
  - To commit fraud or tamper with the equilibrium of contracts celebrated with an official party



# Sanctions



# Sanctions

## Administrative penalties

- Fines - ranging from 0,1% to 20% of Company's annual gross revenue
  - Alternatively, fine can range from six to sixty million reais, if the annual gross revenue is impossible to determine
- Conviction publicity - the decision that convicted the Company for corruption will be published in large newspaper and on the Company's building and website

# Sanctions

## Civil penalties

- Company will forfeit any asset, rights or values it obtained as a result of the infraction
- Suspension or Prohibition of the Legal Entity Activity

# Sanctions

## Civil penalties

- Compulsory dissolution of the Legal Entity
  - when the legal entity was used to promote or facilitate illegal acts
  - when the legal entity was created to hidden or disguise illegal interests or the recipient identity
- Prohibition to receive public resources (e.g., incentives, subsidies, grants, donations or loans) from one to five years

# Penalties' Factors



# Penalties' factors

- Act's severity
- Advantage obtained or intended
- Act's consummation
- Size of damage
- Act's negative effect

# Penalties' factors

- Offender's financial capacity
- Offender's cooperation
- Compliance's Programs existence and effectiveness at the offender's Company
- Contract's values

# Leniency Agreement





# Leniency Agreement

- Similar to the Antitrust Law Agreement
- Requirements:
  - Company must be the first one to come forward and report the infraction
  - Company must cease its unlawful conducts at the agreement's proposal date
  - Company must fully cooperate with the investigations
  - Company must identify the other involved entities, if possible

# Leniency Agreement

- Any damage reparation will still be applicable
- Benefits:
  - Company will not have its conviction publicized
  - Company will not be prohibited to receive public resources (e.g., incentives, subsidies, grants, donations or loans)
  - Company's fine can be decreased up to 2/3 of the applicable fine value

# BAL and Compliance



# BAL and Compliance

- An effective compliance program reduces the fines and penalties, with the main focus on:
  - Internal audits and procedures
  - Incentives to whistleblowers
  - Code of Ethics and its applicability

# Case Study



# Case Study

## Odebrecht

- Odebrecht, and its subsidiary Braskem, offered bribes to public officials of 12 different countries in America and Africa, representing an amount of over USD 1 billion in unlawful payments
- Payments were made to ensure unlawful benefits to Odebrecht in contracts executed with local government authorities or to fraud public biddings
  - Bid rigging

# Case Study

## Odebrecht

- Odebrecht used several offshore companies and foreign bank accounts to perform payments to public officials, whether directly, or through a middleman
  - Use of intermediaries to conceal the identity of the beneficiaries
- Odebrecht and Braskem were investigated by Brazilian, Swiss and American authorities
  - Even though Switzerland and the US were not involved in corruption dealings, their anticorruption laws, as the FCPA, were applied to Odebrecht, since payments were made through their financial systems

# Case Study

## Odebrecht

- As a result, Odebrecht and Braskem executed leniency agreements, committing to penalties of approximately USD 3.5 billion in return of the suspension of further legal action from authorities



# Conclusion

- Comments
- Questions
- Next meeting: Brazilian Antitrust Law

# Thank you

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